107th Congress
1st Session

COMMITTEE PRINT

No. 2

TITLE 10, UNITED STATES CODE
ARMED FORCES

(As Amended Through December 31, 2000)

PREPARED FOR THE USE OF THE

COMMITTEE ON ARMED SERVICES

OF THE

HOUSE OF REPRESENTATIVES

MARCH 2001

Printed for the use of the Committee on
Armed Services of the House of Representatives

TITLE 10, UNITED STATES CODE—ARMED FORCES

(As Amended Through December 31, 2000)

SUBTITLE A—GENERAL MILITARY LAW

Part I—Organization and General Military Powers

Part II—Personnel

Part III—Training and Education

Part IV—Service, Supply, and Procurement

SUBTITLE B—ARMY

SUBTITLE C—NAVY AND MARINE CORPS

SUBTITLE D—AIR FORCE

SUBTITLE E—RESERVE COMPONENTS

Part I—Organization and Administration

Part II—Personnel Generally

Part III—ROPMA Officer Personnel Policies

Part IV—Training & Ed. Assistance

Part V—Service, Supply, and Procurement

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PREFACE

This publication contains the text of title 10, United States Code ("Armed Forces"), as amended through the end of the 106th Congress (ending with Public Law 106–546, enacted Dec. 19, 2000). Nearly all of the amendments to title 10 during the 106th Congress were made by the two annual defense authorization Acts during that Congress, the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65, enacted Oct. 5, 1999) and the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398, enacted Oct. 30, 2000).

The House Committee on Armed Services produces two companion committee print publications that should be noted. These publications are:

Committee Print No. 3, captioned "Compilation of Defense-Related Federal Laws (Other Than Title 10, United States Code)". This publication contains title 32, United States Code (National Guard), title 37, United States Code (Pay and Allowances of the Uniformed Services), and an extensive selection of laws that are in the jurisdiction of the House Committee on Armed Services or that otherwise may be of interest to the national defense community.

Committee Print No. 4, captioned "Laws Relating to Federal Procurement". This publication contains a comprehensive compilation of Federal acquisition statutes.

Title 10, United States Code, contains the organic law governing the Armed Forces of the United States and providing for the organization of the Department of Defense, including the military departments and the reserve components. Title 32, United States Code, contains the law relating to the administration of the National Guard. Titles 10 and 32 were enacted into positive law by the Act of August 10, 1956 (70A Stat. 1), as a codification of all laws then in existence that were permanent and of general applicability to the Armed Forces and the National Guard. By the same Act, Congress repealed the source laws for the codification.

Title 10 is organized into five subtitles, as follows:

- Subtitle A, General Military Law.
- Subtitle B, Army.
- Subtitle C, Navy and Marine Corps.
- Subtitle D, Air Force.
- Subtitle E, Reserve Components.

Subtitle A contains laws applicable to the Department of Defense generally and to all of the Armed Forces, including, in some instances, the Coast Guard. (Laws that are applicable only to the Coast Guard are contained in title 14, United States Code.)

Many of the provisions of subtitle A are also applicable to the commissioned corps of the Public Health Service and the commissioned corps of the National Oceanic and Atmospheric Administration.

Subtitles B, C, and D contain laws that are applicable to only one of the three military departments. Subtitle B contains laws providing for the organization and operation of the Department of the Army and of the Army; subtitle C contains laws providing for the organization and operation of the Department of the Navy and of the Navy and Marine Corps; subtitle D contains laws providing for the organization and operation of the Department of the Air Force and of the Air Force.

In the 1956 codification of title 10, subtitles B and D were based on laws formerly applicable to the Department of War and to the Army before the establishment of the Department of Defense and the separation of the Air Force from the Army in 1947. Thus, the organization and wording of those two subtitles are in most respects parallel. Subtitle C was based on a separate body of law formerly applicable to the cabinet-level Department of the Navy and to the Navy and Marine Corps before the establishment of the Department of Defense. Thus, it is in many respects not parallel with subtitles B and D. However, the Goldwater-Nichols Department of Defense Reorganization Act of 1986 (Public Law 99–433) standardized many provisions of subtitles B, C, and D to provide uniform statutory provisions for the basic authorities of the Secretaries of the military departments and the uniformed service chiefs.

Subtitle E contains laws applicable to the reserve components. That subtitle was created effective December 1, 1994, by the Reserve Officer Personnel Management Act (ROPMA) (enacted as title XVI of Public Law 103–337, the fiscal year 1995 defense authorization Act). The subtitle is a consolidation of the previous provisions of title 10 pertaining to the reserve components of the Armed Forces, including (in many instances) the Coast Guard Reserve. Virtually all previous provisions of title 10 that related to the reserve components were transferred to subtitle E or were repealed and restated in subtitle E. A table showing the disposition of previous title 10 sections into subtitle E, and a table showing the source of provisions of subtitle E, are set forth at the beginning of this publication after the table of sections.

This committee print publication shows the current text of title 10 and a listing, after each section, of the statutes that added that section to title 10 and that have since amended it. Footnotes should not be considered to be an exhaustive compendium of related provisions. The official publication of the United States Code (prepared by the Office of the Law Revision Counsel of the House of Representatives) and commercial publications of the Code include additional reference material after each section, including material showing specific changes made by each amendment and relevant effective date and transition provisions. Commercial publications of the Code also indicate relevant court decisions decided under a section of the Code.

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9685. Obsolete ordnance: loan to educational institutions and State soldiers' and sailors' orphans' homes.
9686. Obsolete ordnance: gift to State homes for soldiers and sailors.

CHAPTER 945—DISPOSITION OF EFFECTS OF DECEASED PERSONS

Sec.
9711. Repealed.]
9712. Disposition of effects of deceased persons by summary court-martial.
[9713. Repealed.]

CHAPTER 947—TRANSPORTATION

Sec.
9741. Control and supervision.
[9742. Repealed.]
9743. Officers: use of transportation.
9746. Civilian personnel in Alaska.
[9748. Repealed.]

CHAPTER 949—REAL PROPERTY

Sec.
9771. Acceptance of donations: land for mobilization, training, supply base, or aviation field.
[9772. Repealed.]
9773. Acquisition and construction: air bases and depots.
[9774–9775. Repealed.]
9776. Emergency construction: fortifications.
9777. Permits: military reservations; landing ferries, erecting bridges, driving livestock.
9778. Licenses: military reservations; erection and use of buildings; Young Men's Christian Association.
9779. Use of public property.
9780. Acquisition of buildings in District of Columbia.
9781. Disposition of real property at missile sites.
9782. Maintenance and repair of real property.
9783. Johnston Atoll: reimbursement for support provided to civil air carriers.

CHAPTER 951—MILITARY CLAIMS

Sec.
9801. Definition.
9802. Admiralty claims against the United States.
9803. Admiralty claims by United States.
9804. Salvage claims by United States.
[9805. Repealed.]
9806. Settlement or compromise: final and conclusive.

CHAPTER 953—ACCOUNTABILITY AND RESPONSIBILITY

Sec.
9831. Custody of departmental records and property.
9832. Property accountability: regulations.
[9833. Repealed.]
9835. Reports of survey.
9836. Individual equipment: unauthorized disposition.
9837. Settlement of accounts: remission or cancellation of indebtedness of enlisted members.
9838. Settlement of accounts: affidavit of squadron commander.
9839. Settlement of accounts: oaths.
9840. Final settlement of officer's accounts.
9841. Payment of small amounts to public creditors.
9842. Settlement of accounts of line officers.

SUBTITLE E—RESERVE COMPONENTS

PART I—ORGANIZATION

CHAPTER 1001—DEFINITIONS

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10001. Definition of State.

CHAPTER 1003—RESERVE COMPONENTS GENERALLY

Sec.
10101. Reserve components named.
10102. Purpose of reserve components.
10103. Basic policy for order into Federal service.
10104. Army Reserve: composition.
10105. Army National Guard of the United States: composition.
10106. Army National Guard: when a component of the Army.
10107. Army National Guard of the United States: status when not in Federal service.
10108. Naval Reserve: administration.
10109. Marine Corps Reserve: administration.
10110. Air Force Reserve: composition.
10111. Air National Guard of the United States: composition.
10112. Air National Guard: when a component of the Air Force.
10113. Air National Guard of the United States: status when not in Federal service.
10114. Coast Guard Reserve.

CHAPTER 1005—ELEMENTS OF RESERVE COMPONENTS

Sec.
10141. Ready Reserve; Standby Reserve; Retired Reserve: placement and status of members; training categories.
10142. Ready Reserve.
10143. Ready Reserve: Selected Reserve.
10144. Ready Reserve: Individual Ready Reserve.
10145. Ready Reserve: placement in.
10146. Ready Reserve: transfer from.
10147. Ready Reserve: training requirements.
10148. Ready Reserve: failure to satisfactorily perform prescribed training.
10149. Ready Reserve: continuous screening.
10150. Ready Reserve: transfer back from Standby Reserve.
10151. Standby Reserve: composition.
10152. Standby Reserve: inactive status list.
10153. Standby Reserve: status of members.
10154. Retired Reserve.

CHAPTER 1006—RESERVE COMPONENT COMMANDS

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10171. United States Army Reserve Command.
10172. Naval Reserve Force.
10173. Marine Forces Reserve.
10174. Air Force Reserve Command.

CHAPTER 1007—ADMINISTRATION OF RESERVE COMPONENTS

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10201. Assistant Secretary of Defense for Reserve Affairs.
10202. Regulations.
10203. Reserve affairs: designation of general or flag officer of each armed force.
10204. Personnel records.
10205. Members of Ready Reserve: requirement of notification of change of status.
10206. Members: periodic physical examinations.
10207. Mobilization forces: maintenance.
10208. Annual mobilization exercise.
10209. Regular and reserve components: discrimination prohibited.
10210. Dissemination of information.
10211. Policies and regulations: participation of Reserve officers in preparation and administration.
10212. Gratuitous services of officers: authority to accept.
10213. Reserve components: dual membership prohibited.
10214. Adjutants general and assistant adjutants general: reference to other officers of National Guard.
10215. Officers of Army National Guard of the United States and Air National Guard of the United States: authority with respect to Federal status.
10216. Military technicians (dual status).

10217. Non-dual status military technicians.
10218. Army and Air Force Reserve technicians: conditions for retention; mandatory retirement under civil service laws.

CHAPTER 1009—RESERVE FORCES POLICY BOARDS AND COMMITTEES

Sec.
10301. Reserve Forces Policy Board.
10302. Army Reserve Forces Policy Committee.
10303. Naval Reserve Policy Board.
10304. Marine Corps Reserve Policy Board.
10305. Air Force Reserve Forces Policy Committee.

CHAPTER 1011—NATIONAL GUARD BUREAU

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10501. National Guard Bureau.
10502. Chief of the National Guard Bureau: appointment; adviser on National Guard matters; grade.
10503. Functions of National Guard Bureau: charter from Secretaries of the Army and Air Force.
10504. Chief of National Guard Bureau: annual report.
10505. Vice Chief of the National Guard Bureau.
10506. Other senior National Guard Bureau officers.
10507. National Guard Bureau: assignment of officers of regular or reserve components.
[10508. Repealed.]

CHAPTER 1013—BUDGET INFORMATION AND ANNUAL REPORTS TO CONGRESS

Sec.
10541. National Guard and reserve component equipment: annual report to Congress.
10542. Army National Guard combat readiness: annual report.
10543. National Guard and reserve component equipment procurement and military construction funding: inclusion in future-years defense program.

PART II—PERSONNEL GENERALLY

CHAPTER 1201—AUTHORIZED STRENGTHS AND DISTRIBUTION IN GRADE

Sec.
12001. Authorized strengths: reserve components.
12002. Authorized strengths: Army and Air Force reserve components, exclusive of members on active duty.
12003. Authorized strengths: commissioned officers in an active status.
12004. Strength in grade: reserve general and flag officers in an active status.
12005. Strength in grade: commissioned officers in grades below brigadier general or rear admiral (lower half) in an active status.
12006. Strength limitations: authority to waive in time of war or national emergency.
12007. Reserve officers of the Army: distribution.
12008. Army Reserve and Air Force Reserve: warrant officers.
12009. Army and Air Force reserve components: temporary increases.
12010. Computations for Naval Reserve and Marine Corps Reserve: rule when fraction occurs in final result.
12011. Authorized strengths: reserve officers on active duty or on full-time National Guard duty for administration of the reserves or the National Guard.
12012. Authorized strengths: senior enlisted members on active duty or on full-time National Guard duty for administration of the reserves or the National Guard.

CHAPTER 1203—ENLISTED MEMBERS

Sec.
12101. Definition.
12102. Reserve components: qualifications.
12103. Reserve components: terms.
12104. Reserve components: transfers.

12105. Army Reserve and Air Force Reserve: transfer from Guard components.
12106. Army and Air Force Reserve: transfer to upon withdrawal as member of National Guard.
12107. Army National Guard of United States; Air National Guard of the United States: enlistment in.

CHAPTER 1205—APPOINTMENT OF RESERVE OFFICERS

Sec.
12201. Reserve officers: qualifications for appointment.
12202. Commissioned officer grades.
12203. Commissioned officers: appointment, how made; term.
12204. Commissioned officers: original appointment; limitation.
12205. Commissioned officers: appointment; educational requirement.
12206. Commissioned officers: appointment of former commissioned officers.
12207. Commissioned officers: service credit upon original appointment.
12208. Officers: appointment upon transfer.
12209. Officer candidates: enlisted Reserves.
12210. Attending Physician to the Congress: reserve grade while so serving.
12211. Officers: Army National Guard of the United States.
12212. Officers: Air National Guard of the United States.
12213. Officers; Army Reserve: transfer from Army National Guard of the United States.
12214. Officers; Air Force Reserve: transfer from Air National Guard of the United States.
12215. Commissioned officers: reserve grade of adjutants general and assistant adjutants general.

CHAPTER 1207—WARRANT OFFICERS

Sec.
12241. Warrant officers: grades; appointment, how made; term.
12242. Warrant officers: promotion.
12243. Warrant officers: suspension of laws for promotion or mandatory retirement or separation during war or emergency.

CHAPTER 1209—ACTIVE DUTY

Sec.
12301. Reserve components generally.
12302. Ready Reserve.
12303. Ready Reserve: members not assigned to, or participating satisfactorily in, units.
12304. Selected Reserve and certain Individual Ready Reserve members; order to active duty other than during war or national emergency.
12305. Authority of President to suspend certain laws relating to promotion, retirement, and separation.
12306. Standby Reserve.
12307. Retired Reserve.
12308. Retention after becoming qualified for retired pay.
12309. Reserve officers: use of in expansion of armed forces.
12310. Reserves: for organizing, administering, etc., reserve components.
12311. Active duty agreements.
12312. Active duty agreements: release from duty.
12313. Reserves: release from active duty.
12314. Reserves: kinds of duty.
12315. Reserves: duty with or without pay.
12316. Payment of certain Reserves while on duty.
12317. Reserves: theological students; limitations.
12318. Reserves on active duty: duties; funding.
12319. Ready Reserve: muster duty.
12320. Reserve officers: grade in which ordered to active duty.
12321. Reserve Officer Training Corps units: limitation on number of Reserves assigned.
12322. Active duty for health care.

CHAPTER 1211—NATIONAL GUARD MEMBERS IN FEDERAL SERVICE

Sec.
12401. Army and Air National Guard of the United States: status.

12402. Army and Air National Guard of the United States: commissioned officers; duty in National Guard Bureau.
12403. Army and Air National Guard of the United States: members; status in which ordered into Federal service.
12404. Army and Air National Guard of the United States: mobilization; maintenance of organization.
12405. National Guard in Federal service: status.
12406. National Guard in Federal service: call.
12407. National Guard in Federal service: period of service; apportionment.
12408. National Guard in Federal service: physical examination.

CHAPTER 1213—SPECIAL APPOINTMENTS, ASSIGNMENTS, DETAILS, AND DUTIES

Sec.
12501. Reserve components: detail of members of regular and reserve components to assist.
12502. Chief and assistant chief of staff of National Guard divisions and wings in Federal service: detail.
12503. Ready Reserve: funeral honors duty.
[12505. Repealed.]

CHAPTER 1214—READY RESERVE MOBILIZATION INCOME INSURANCE

Sec.
12521. Definitions.
12522. Establishment of insurance program.
12523. Risk insured.
12524. Enrollment and election of benefits.
12525. Benefit amounts.
12526. Premiums.
12527. Payment of premiums.
12528. Reserve Mobilization Income Insurance Fund.
12529. Board of Actuaries.
12530. Payment of benefits.
12531. Purchase of insurance.
12532. Termination for nonpayment of premiums; forfeiture.
12533. Termination of program.

CHAPTER 1215—MISCELLANEOUS PROHIBITIONS AND PENALTIES

Sec.
12551. Prohibition of use of Air Force Reserve AGR personnel for Air Force base security functions.
12552. Funeral honors functions at funerals for veterans.

CHAPTER 1217—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.
12601. Compensation: Reserve on active duty accepting from any person.
12602. Members of Army National Guard of United States and Air National Guard of United States: credit for service as members of National Guard.
12603. Attendance at inactive-duty training assemblies: commercial travel at Federal supply schedule rates.
12604. Billeting in Department of Defense facilities: Reserves attending inactive-duty training.
12605. Presentation of United States flag: members transferred from an active status or discharged after completion of eligibility for retired pay.

CHAPTER 1219—STANDARDS AND PROCEDURES FOR RETENTION AND PROMOTION

Sec.
12641. Standards and procedures: Secretary to prescribe.
12642. Standards and qualifications: result of failure to comply with.
12643. Boards for appointment, promotion, and certain other purposes: composition.
12644. Members physically not qualified for active duty: discharge or transfer to retired status.
12645. Commissioned officers: retention until completion of required service.

12646. Commissioned officers: retention of after completing 18 or more, but less than 20, years of service.
12647. Commissioned officers: retention in active status while assigned to Selective Service System or serving as United States property and fiscal officers.

CHAPTER 1221—SEPARATION

Sec.
12681. Reserves: discharge authority.
12682. Reserves: discharge upon becoming ordained minister of religion.
12683. Reserve officers: limitation on involuntary separation.
12684. Reserves: separation for absence without authority or sentence to imprisonment.
12685. Reserves separated for cause: character of discharge.
12686. Reserves on active duty within two years of retirement eligibility: limitation on release from active duty.
12687. Reserves under confinement by sentence of court-martial: separation after six months confinement.

CHAPTER 1223—RETIRED PAY FOR NON-REGULAR SERVICE

Sec.
12731. Age and service requirements.
12731a. Temporary special retirement qualification authority.
12731b. Special rule for members with physical disabilities not incurred in line of duty.
12732. Entitlement to retired pay: computation of years of service.
12733. Computation of retired pay: computation of years of service.
12734. Time not creditable toward years of service.
12735. Inactive status list.
12736. Service credited for retired pay benefits not excluded for other benefits.
12737. Limitation on active duty.
12738. Limitations on revocation of retired pay.
12739. Computation of retired pay.
12740. Eligibility: denial upon certain punitive discharges or dismissals.
12741. Retirement from active reserve service performed after regular retirement.

CHAPTER 1225—RETIRED GRADE

Sec.
12771. Reserve officers: grade on transfer to Retired Reserve.
12772. Reserve commissioned officers who have served as Attending Physician to the Congress: grade on transfer to Retired Reserve.
12773. Limitation on accrual of increased pay or benefits.
12774. Retired lists.

PART III—PROMOTION AND RETENTION OF OFFICERS ON THE RESERVE ACTIVE-STATUS LIST

CHAPTER 1401—APPLICABILITY AND RESERVE ACTIVE-STATUS LISTS

Sec.
14001. Applicability of this part.
14002. Reserve active-status lists: requirement for each armed force.
14003. Reserve active-status lists: position of officers on the list.
14004. Reserve active-status lists: eligibility for Reserve promotion.
14005. Competitive categories.
14006. Determination of years in grade.

CHAPTER 1403—SELECTION BOARDS

Sec.
14101. Convening of selection boards.
14102. Selection boards: appointment and composition.
14103. Oath of members.
14104. Confidentiality of board proceedings.
14105. Notice of convening of promotion board.
14106. Communication with board by officers under consideration.
14107. Information furnished by the Secretary concerned to promotion boards.

14108. Recommendations by promotion boards.
14109. Reports of promotion boards: in general.
14110. Reports of promotion boards: review by Secretary.
14111. Reports of selection boards: transmittal to President.
14112. Dissemination of names of officers selected.

CHAPTER 1405—PROMOTIONS

Sec.
14301. Eligibility for consideration for promotion: general rules.
14302. Promotion zones.
14303. Eligibility for consideration for promotion: minimum years of service in grade.
14304. Eligibility for consideration for promotion: maximum years of service in grade.
14305. Establishment of promotion zones: mandatory consideration for promotion.
14306. Establishment of promotion zones: Naval Reserve and Marine Corps Reserve running mate system.
14307. Number of officers to be recommended for promotion.
14308. Promotions: how made.
14309. Acceptance of promotion; oath of office.
14310. Removal of officers from a list of officers recommended for promotion.
14311. Delay of promotion: involuntary.
14312. Delay of promotion: voluntary.
14313. Authority to vacate promotions to grade of brigadier general or rear admiral (lower half).
14314. Army and Air Force commissioned officers: generals ceasing to occupy positions commensurate with grade; State adjutants general.
14315. Position vacancy promotions: Army and Air Force officers.
14316. Army National Guard and Air National Guard: appointment to and Federal recognition in a higher reserve grade after selection for promotion.
14317. Officers in transition to and from the active-status list or active-duty list.

CHAPTER 1407—FAILURE OF SELECTION FOR PROMOTION AND INVOLUNTARY SEPARATION

Sec.
14501. Failure of selection for promotion.
14502. Special selection boards: correction of errors.
14503. Discharge of officers with less than five years of commissioned service or found not qualified for promotion to first lieutenant or lieutenant (junior grade).
14504. Effect of failure of selection for promotion: reserve first lieutenants of the Army, Air Force, and Marine Corps and reserve lieutenants (junior grade) of the Navy.
14505. Effect of failure of selection for promotion: reserve captains of the Army, Air Force, and Marine Corps and reserve lieutenants of the Navy.
14506. Effect of failure of selection for promotion: reserve majors of the Army, Air Force, and Marine Corps and reserve lieutenant commanders of the Navy.
14507. Removal from the reserve active-status list for years of service: reserve lieutenant colonels and colonels of the Army, Air Force, and Marine Corps and reserve commanders and captains of the Navy.
14508. Removal from the reserve active-status list for years of service: reserve general and flag officers.
14509. Separation at age 60: reserve officers in grades below brigadier general or rear admiral (lower half).
14510. Separation at age 60: reserve brigadier generals and rear admirals (lower half).
14511. Separation at age 62: major generals and rear admirals.
14512. Separation at age 64: officers holding certain offices.
14513. Separation for failure of selection of promotion.
14514. Discharge or retirement for years of service or after selection for early removal.
14515. Discharge or retirement for age.
14516. Separation to be considered involuntary.

14517. Entitlement of officers discharged under this chapter to separation pay.
14518. Continuation of officers to complete disciplinary action.

CHAPTER 1409—CONTINUATION OF OFFICERS ON THE RESERVE ACTIVE-STATUS LIST AND SELECTIVE EARLY REMOVAL

Sec.
14701. Selection of officers for continuation on the reserve active-status list.
14702. Retention on reserve active-status list of certain officers until age 60.
14703. Authority to retain chaplains and officers in medical specialties until specified age.
14704. Selective early removal from the reserve active-status list.
14705. Selective early retirement: reserve general and flag officers of the Navy and Marine Corps.
14706. Computation of total years of service.

CHAPTER 1411—ADDITIONAL PROVISIONS RELATING TO INVOLUNTARY SEPARATION

Sec.
14901. Separation of chaplains for loss of professional qualifications.
14902. Separation for substandard performance and for certain other reasons.
14903. Boards of inquiry.
14904. Rights and procedures.
14905. Officer considered for removal: retirement or discharge.
14906. Officers eligible to serve on boards.
14907. Army National Guard of the United States and Air National Guard of the United States: discharge and withdrawal of Federal recognition of officers absent without leave.

PART IV—TRAINING FOR RESERVE COMPONENTS AND EDUCATIONAL ASSISTANCE PROGRAMS

CHAPTER 1601—TRAINING GENERALLY

[No present sections].

CHAPTER 1606—EDUCATIONAL ASSISTANCE FOR MEMBERS OF THE SELECTED RESERVE

Sec.
16131. Educational assistance program: establishment; amount.
16132. Eligibility for educational assistance.
16133. Time limitation for use of entitlement.
16134. Termination of assistance.
16135. Failure to participate satisfactorily; penalties.
16136. Administration of program.
16137. Biennial report to Congress.

CHAPTER 1608—HEALTH PROFESSIONS STIPEND PROGRAM

Sec.
16201. Financial assistance: health-care professionals in reserve components.
16202. Reserve service: required active duty for training.
16203. Penalties and limitations.
16204. Regulations.

CHAPTER 1609—EDUCATION LOAN REPAYMENT PROGRAMS

Sec.
16301. Education loan repayment program: enlisted members of Selected Reserve with critical specialties.
16302. Education loan repayment program: health professions officers serving in Selected Reserve with wartime critical medical skill shortages.

CHAPTER 1611—OTHER EDUCATIONAL ASSISTANCE PROGRAMS

Sec.
16401. Marine Corps Platoon Leaders Class: college tuition assistance program.

PART V—SERVICE, SUPPLY, AND PROCUREMENT

CHAPTER 1801—ISSUE OF SERVICEABLE MATERIAL TO RESERVE COMPONENTS

[No present sections].

CHAPTER 1803—FACILITIES FOR RESERVE COMPONENTS

Sec.
18231. Purpose.
18232. Definitions.
18233. Acquisition.
18233a. Limitation on certain projects; authority to carry out small projects with operation and maintenance funds.
18234. Location and use.
18235. Administration; other use permitted by Secretary.
18236. Contributions to States; other use permitted by States.
18237. Supervision of construction: compliance with State law.
18238. Army National Guard of United States; Air National Guard of United States: limitation on relocation of units.
18239. Waiver of certain restrictions.

CHAPTER 1805—MISCELLANEOUS PROVISIONS

Sec.
18501. Reserve components: personnel and logistic support by military departments.
18502. Reserve components: supplies, services, and facilities.
18505. Reserves traveling for annual training duty or inactive-duty training: space-required travel on military aircraft.

The Reserve Officer Personnel Mangement Act (ROPMA) (title XVI of Public Law 103–337) consolidated in a new subtitle E at the end of title 10, United States Code, the provisions of title 10 relating to reserve components.

The following two tables show (1) by previous title 10 section number, the disposition into subtitle E of those sections of title 10 that were consolidated into the new subtitle, and (2) by subtitle E section number, the source of each section of the new subtitle from the previous sections of title 10.

Dispositions of Title 10 Sections Made by ROPMA Reorganization

Table #1 shows the disposition made by ROPMA of previous sections of title 10, United States Code, that were (A) repealed, (B) repealed and reenacted in subtitle E without substantive revision, or (C) transferred to subtitle E.

ROPMA Cross-Reference Table #1 (DISPOSITIONS)

PREVIOUS SECTION	SUBTITLE E SECTION	Transfer (TR), Repeal (R), or Repeal & Reenact (RR)
[Subtitle A sections]		
CH. 2:		
115b	10541	TR
CH. 7:		
175	10301	RR
CH. 11:		
261(a)	10101	RR
261(b)	10213	RR
262	10102	RR
263	10103	RR
264(a)	10203	RR
264(b)	18501	RR
265	10211	RR
266	12643	TR
267	10141(a), (b)	RR
268(a)	10142	RR
268(b), (c)	10143	RR
269(a)–(d)	10145	RR
269(e)–(g)	10146	RR
270(a)	10147	RR
270(b), (c)	10148	RR

ROPMA Cross-Reference Table #1—Continued
(DISPOSITIONS)

PREVIOUS SECTION	SUBTITLE E SECTION	Transfer (TR), Repeal (R), or Repeal & Reenact (RR)
271	10149	RR
272	10150	RR
273(a)	10151	RR
273(b)	10152	RR
273(c)	10153	RR
274	10154	RR
275	10204	RR
276	10207	RR
277	10209	RR
278	10210	RR
279	10212	RR
280	10202	RR
281	10214	RR
CH. 31:		
510	12102	TR
511	12103	TR
512	12104	TR
517(b), (c) [part]	12012	RR
CH. 32:		
524	12011	TR
CH. 34:		
591	12201	TR
592	12202	TR
593	12203	TR
594	12204	TR
595	12208	TR
596	12205	TR
597	12241	TR
598	12242	TR
599	12243	TR
600	12209	TR
600a	12210	TR
CH. 36:		
644	123	RR
CH. 37:		
652	10205	RR
CH. 39:		
672	12301	TR
673	12302	TR
673a	12303	TR
673b	12304	TR
673c	12305	TR
674	12306	TR
675	12307	TR
676	12308	TR
677	12309	TR
678	12310	TR

ROPMA Cross-Reference Table #1—Continued
(DISPOSITIONS)

PREVIOUS SECTION	SUBTITLE E SECTION	Transfer (TR), Repeal (R), or Repeal & Reenact (RR)
679	12311	TR
680	12312	TR
681	12313	TR
682	12314	TR
683	12315	TR
684	12316	TR
685	12317	TR
686	12318	TR
687	12319	TR
689	12320	TR
690	12321	TR
CH. 41:		
715	12501	RR
CH. 51:		
1001	12641	TR
1002	12642	TR
1003	[none]	R
1004(a), (b)	10206	RR
1004(c)	12644	TR
1005	12645	TR
1006	12646	TR
1007	12647	TR
CH. 53:		
1033	12601	RR
CH. 59:		
1162(a)	12681	RR
1162(b)	12682	RR
1163(a)	12683	RR
1163(b)	12684	RR
1163(c)	12685	RR
1163(d)	12686	RR
CH. 67:		
1331	12731	TR
1331a	12731a	TR
1332	12732	TR
1333	12733	TR
1334	12734	TR
1335	12735	TR
1336	12736	TR
1337	12737	TR
1338	12738	TR
CH. 69:		
1374(a), (c)	[none]	R
1374(b), (f)	12771	RR
1374(e)	12772	RR
1374(d)	12773	RR
1376(a)	12774(a)	RR

ROPMA Cross-Reference Table #1—Continued
(DISPOSITIONS)

PREVIOUS SECTION	SUBTITLE E SECTION	Transfer (TR), Repeal (R), or Repeal & Reenact (RR)
CH. 71:		
1401	12739	[amended]
CH. 101:		
2001	10141(c)	RR
CH. 105:		
2128(a)–(e)	16201	TR
2129	16202	TR
2130(a), (b)	16203	TR
2130(c)	16204	RR
CH. 106:		
2131	16131	TR
2132	16132	TR
2133	16133	TR
2134	16134	TR
2135	16135	TR
2136	16136	TR
2137	16137	TR
CH. 109:		
2171	16301	[amended]
2172	16302	TR
CH. 133:		
2231	18231	TR
2232	18232	TR
2233	18233	TR
2233a	18233a	TR
2234	18234	TR
2235	18235	TR
2236	18236	TR
2237	18237	TR
2238	18238	TR
2239	18239	TR
CH. 152:		
2540	18502	RR
[Subtitle B sections]		
CH. 303:		
3021	10302	TR
CH. 307:		
3076	10104	RR
3077	10105	RR
3078	10106	RR
3079	10107	RR
3080	10215	RR
3082	10542	TR
CH. 331:		
3212	12009	RR
3217	12003	RR
3218	12004	RR

ROPMA Cross-Reference Table #1—Continued
(DISPOSITIONS)

PREVIOUS SECTION	SUBTITLE E SECTION	Transfer (TR), Repeal (R), or Repeal & Reenact (RR)
3219	12005	RR
3220	12007	RR
3221	12001	RR
3222	12002	RR
3223	12008	RR
3224	12001	RR
3225	12002	RR
CH. 333:		
3259	12105	RR
3260	12106	RR
3261	12107	RR
CH. 337:		
3351	12211	TR
3352	12213	TR
3353	12207	R
3354–70	CH. 1401–1411	R
3371	[none]	RR
3375	14314(a)	RR
3378	[none]	R
3380	14311(e)	RR
3382	[none]	R
3383	[none]	R
3384	14315	RR
3385	14308(f)	RR
3386	[none]	R
3388	[none]	R
3389	[none]	R
3390	[none]	R
3392	12215	RR
3393	[none]	R
3394	[none]	R
3395	NM[none]	R
3396	[none]	R
CH. 341:		
3495	12401	RR
3496	12402	RR
3497	12403	RR
3498	12404	RR
3499	12405	RR
3500	12406	RR
3501	12407	RR
3502	12408	RR
CH. 343:		
3541	10507	RR
3542	12502	RR
CH. 353:		
3686	12602	RR

ROPMA Cross-Reference Table #1—Continued (DISPOSITIONS)

PREVIOUS SECTION	SUBTITLE E SECTION	Transfer (TR), Repeal (R), or Repeal & Reenact (RR)
CH. 361:		
3819(a)	[none]	R
3819(b)	14403(a)(2)	RR
3820(a), (b)	14907	RR
3820(c)	[none]	R
CH. 363:		
3843(a)	14510	RR
3843(b)	[none]	R
3844	14511	RR
3845	14512	RR
3846	[none]	R
3848	[none]	R
3850	[none]	R
3851	14508(a)	RR
3852	14508(b)	RR
3853	14706	RR
3854	[none]	R
3855	14703	RR
[Subtitle C sections]		
CH. 519:		
5251(a), (b)	10108	RR
5251(c)	10303	RR
5252(a), (b)	10109	RR
5252(c)	10304	RR
CH. 531:		
5413	12001	RR
5414	12003	RR
CH. 533:		
5454	12010	[nc]
5456	12001	RR
5457(a)	12004	RR
5457(b)–(d)	12005	RR
5458(a)	12004	RR
5458(b)–(d)	12005	RR
CH. 535:		
5506	[none]	R
CH. 541:		
5665	14306	R
CH. 549:		
5891–5912	CH. 1401–1411	R
CH. 555:		
6017	12774(b)	RR
6034	[none]	R
CH. 573:		
6389(a)–(c)	[amended].	
6389(d)	14706	RR
6389(e)	[none]	R

ROPMA Cross-Reference Table #1—Continued (DISPOSITIONS)

PREVIOUS SECTION	SUBTITLE E SECTION	Transfer (TR), Repeal (R), or Repeal & Reenact (RR)
6389(f)(1), (2)	14508	RR
6389(f)(3)	14705	RR
6389(g)	[none]	R
6391(a)	[none]	R
6391(b)	14512(b)	RR
6391(c)	[none]	R
6392	14703	RR
6397	[none]	R
6403	[none]	R
6410	14705	RR
[Subtitle D sections]		
CH. 803:		
8021	10305	TR
CH. 807:		
8076	10110	RR
8077	10111	RR
8078	10112	RR
8079	10113	RR
8080	10215	RR
CH. 831:		
8212	12009	RR
8217	12003	RR
8218	12004	RR
8219	12005	RR
8221	12001	RR
8222	12002	RR
8223	12008	RR
8224	12001	RR
8225	12002	RR
CH. 833:		
8259	12105	RR
8260	12106	RR
8261	12107	RR
CH. 837:		
8351	12212	TR
8352	12214	TR
8353	12207	R
8354–72	[Ch. 1401–1407]	R
8373	14301(e), 14315	RR
8374	14308(f)	RR
8375	14314(a)	RR
8376	[none]	R
8377	[none]	R
8378	[none]	R
8379	[none]	R
8380	14311(e)	RR
8381	14314(b)	RR

ROPMA Cross-Reference Table #1—Continued (DISPOSITIONS)

PREVIOUS SECTION	SUBTITLE E SECTION	Transfer (TR), Repeal (R), or Repeal & Reenact (RR)
8392	12215	RR
8393	[none]	R
8394	[none]	R
8395	[none]	R
8396	[none]	R
CH. 841:		
8495	12401	RR
8496	12402	RR
8497	12403	RR
8498	12404	RR
8499	12405	RR
8500	12406	RR
8501	12407	RR
8502	12408	RR
CH. 843:		
8541	10507	RR
8542	12502	RR
CH. 853:		
8686	12602	RR
CH. 861:		
8819	[none]	R
8820	14907	RR
CH. 863:		
8843	14510	RR
8844	14511	RR
8845	14512	RR
8846	[none]	R
8848	[none]	R
8850	[none]	R
8851	14508(a)	RR
8852	14508(b)	RR
8853	14706	RR
8855	14703	RR

Source of Sections of Subtitle E Resulting From ROPMA Reorganization

Table #2 shows the source of each section of subtitle E of title 10, United States Code (added by ROPMA), that (A) was transferred to that subtitle from a previous provision of title 10, or (B) is a restatement (without substantive revision) in that subtitle of a previously existing provision of title 10.

ROPMA Cross-Reference Table #2 (SOURCES)

SUBTITLE E SECTION	SOURCE SECTION	Transfer (TR) or Repeal & Reenact (RR)
PART I—ORGANIZATION AND ADMINISTRATION		
CH. 1001:		
10001	[none]	
CH. 1003:		
10101	261(a)	RR
10102	262	RR
10103	263	RR
10104	3076	RR
10105	3077	RR
10106	3078	RR
10107	3079	RR
10108	5251(a), (b)	RR
10109	5252(a), (b)	RR
10110	8076	RR
10111	8077	RR
10112	8078	RR
10113	8079	RR
10114	[none]	
CH. 1005:		
10141(a), (b)	267	RR
10141(c)	2001	RR
10142	268(a)	RR
10143	268(b), (c)	RR
10144	[none]	
10145	269(a)–(d)	RR
10146	269(e)–(g)	RR
10147	270(a)	RR
10148	270(b), (c)	RR
10149	271	RR
10150	272	RR
10151	273(a)	RR
10152	273(b)	RR
10153	273(c)	RR
10154	274	RR
CH. 1007:		
10201	[none]	

ROPMA Cross-Reference Table #2—Continued (SOURCES)

SUBTITLE E SECTION	SOURCE SECTION	Transfer (TR) or Repeal & Reenact (RR)
10202	280	RR
10203	264(a)	RR
10204	275	RR
10205	652	RR
10206	1004(a), (b)	RR
10207	276	RR
10208	552(e) of P.L. 98–525	RR
10209	277	RR
10210	278	RR
10211	265	RR
10212	279	RR
10213	261(b)	RR
10214	281	RR
10215	3080, 8080	RR
CH. 1009:		
10301	175	RR
10302	3021	TR
10303	5251(c)	RR
10304	5252(c)	RR
10305	8021	TR
CH. 1011:		
10501	3040(a)	RR
10502	3040(b),(c)	RR
10503	[new]	
10504	[new]	
10505	[new]	
10506	[new]	
10507	3541, 8541	RR
10508	[new],	
CH. 1013:		
10541	115b	TR
10542	3082	TR
PART II—PERSONNEL GENERALLY		
CH. 1201:		
12001	3221, 3224, 5413, 5456, 8221, 8224.	RR
12002	3222, 3225, 8222, 8225	RR
12003	3217, 5414, 8217	RR
12004	3218, 5457(a), 5458(a), 8218.	RR
12005	3219, 5457(b)–(d), 5458(b)–(d), 8219.	RR
12006	[none]	
12007	3220	RR
12008	3223, 8223	RR
12009	3212, 8212	RR
12010	5454	

ROPMA Cross-Reference Table #2—Continued (SOURCES)

SUBTITLE E SECTION	SOURCE SECTION	Transfer (TR) or Repeal & Reenact (RR)
12011	524	TR
12012	517(b), (c) [part]	RR
CH. 1203:		
12101	501	
12102	510	TR
12103	511	TR
12104	512	TR
12105	3259, 8259	RR
12106	3260, 8260	RR
12107	3261, 8261	RR
CH. 1205:		
12201	591	TR
12202	592	TR
12203	593	TR
12204	594	TR
12205	596	TR
12206	[none]	
12207	3353, 5600, 8353	RR
12208	595	TR
12209	600	TR
12210	600a	TR
12211	3351	TR
12212	8351	TR
12213	3352	TR
12214	8352	TR
12215	3392, 8392	RR
CH. 1207:		
12241	597	TR
11242	598	TR
11243	599	TR
CH. 1209:		
12301	672	TR
12302	673	TR
12303	673a	TR
12304	673b	TR
12305	673c	TR
12306	674	TR
12307	675	TR
12308	676	TR
12309	677	TR
12310	678	TR
12311	679	TR
12312	680	TR
12313	681	TR
12314	682	TR
12315	683	TR
12316	684	TR

ROPMA Cross-Reference Table #2—Continued (SOURCES)

SUBTITLE E SECTION	SOURCE SECTION	Transfer (TR) or Repeal & Reenact (RR)
12317	685	TR
12318	686	TR
12319	687	TR
12320	689	TR
12321	690	TR
CH. 1211:		
12401	3495, 8495	RR
12402	3496, 8496	RR
12403	3497, 8497	RR
12404	3498, 8498	RR
12405	3499, 8499	RR
12406	3500, 8500	RR
12407	3501, 8501	RR
12408	3502, 8502	RR
CH. 1213:		
12501	715	RR
12502	3542, 8542	RR
CH. 1215:		
	[No present sections].	
CH. 1217:		
12601	1033	RR
12602	3686, 8686	RR
CH. 1219:		
12641	1001	TR
12642	1002	TR
12643	266	TR
12644	1004(c)	TR
12645	1005	TR
12646	1006	TR
12467	1007	TR
CH. 1221:		
12681	1162(a)	RR
12682	1162(b)	RR
12683	1163(a)	RR
12684	1163(b)	RR
12685	1163(c)	RR
12686	1163(d)	RR
CH. 1223:		
12731	1331	TR
12731a	1331a	TR
12732	1332	TR
12733	1333	TR
12734	1334	TR
12735	1335	TR
12736	1336	TR
12737	1337	TR
12738	1338	TR

ROPMA Cross-Reference Table #2—Continued
(SOURCES)

SUBTITLE E SECTION	SOURCE SECTION	Transfer (TR) or Repeal & Reenact (RR)
12739	1401	Amended
CH. 1225:		
12771	1374(b), (f)	RR
12772	1374(e)	RR
12773	1374(d)	RR
12774	1376(a), 6017	RR

PART III—PROMOTION AND RETENTION OF OFFICERS ON THE RESERVE ACTIVE-STATUS LIST

[The provisions of part III (chapters 1401–1411) set out the revised officer personnel policies of ROPMA]

CH. 1401:		
14001		
14002		
14003		
14004		
14005		
14006		
CH. 1403:		
14101		
14102		
14103		
14104		
14105		
14106		
14107		
14108		
14109		
14110		
14111		
14112		
CH. 1405:		
14301		
14302		
14303		
14304		
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14306		
14307		
14308		
14309		
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14311		
14312		
14313		
14314		
14315		
14316		

ROPMA Cross-Reference Table #2—Continued
(SOURCES)

SUBTITLE E SECTION	SOURCE SECTION	Transfer (TR) or Repeal & Reenact (RR)
14317		
CH. 1407:		
14501		
14502		
14503		
14504		
14505		
14506		
14507		
14508		
14509		
14510		
14511		
14512		
14513		
14514		
14515		
14516		
14517		
CH. 1409:		
14701		
14702		
14703		
14704		
14705		
14706		
CH. 1411:		
14901		
14902		
14903		
14904		
14905		
14906		
14907		
PART IV—TRAINING FOR RESERVE COMPONENTS AND EDUCATIONAL ASSISTANCE PROGRAMS		
CH. 1601:		
	[No present sections].	
CH. 1606:		
16131	2131	TR
16132	2132	TR
16133	2133	TR
16134	2134	TR
16135	2135	TR
16136	2136	TR
16137	2137	TR

ROPMA Cross-Reference Table #2—Continued
(SOURCES)

SUBTITLE E SECTION	SOURCE SECTION	Transfer (TR) or Repeal & Reenact (RR)
CH. 1608:		
16201	2128(a)–(e)	TR
16202	2129	TR
16203	2130(a), (b)	TR
16204	2130(c)	RR
CH. 1609:		
16301	2171	Amended
16302	2172	TR
PART V—SERVICE, SUPPLY, AND PROCUREMENT		
CH. 1801:		
	[No present sections].	
CH. 1803:		
18231	2231	TR
18232	2232	TR
18233	2233	TR
18233a	2233a	TR
18234	2234	TR
18235	2235	TR
18236	2236	TR
18237	2237	TR
18238	2238	TR
18239	2239	TR
CH. 1805:		
18501	264(b)	RR
18502	2540	RR

TITLE 10—ARMED FORCES

Subtitle Sec.
A. General Military Law **101**
B. Army **3001**
C. Navy and Marine Corps **5001**
D. Air Force **8001**
E. Reserve Components **10001**

Subtitle A—General Military Law

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71. Computation of Retired Pay 1401
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79. Correction of Military Records 1551
80. Miscellaneous Investigation Requirements and Other Duties 1561
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83. Civilian Defense Intelligence Employees 1601
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88. Military Family Programs and Military Child Care 1781
[89. Repealed.]

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CHAPTER 1—DEFINITIONS

Sec.
101. Definitions.

§ 101. Definitions

(a) IN GENERAL.—The following definitions apply in this title:

(1) The term "United States", in a geographic sense, means the States and the District of Columbia.

(2) The term "Territory" (except as provided in section 101(1) of title 32 for laws relating to the militia, the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States) means any Territory organized after August 10, 1956, so long as it remains a Territory.

(3) The term "possessions" includes the Virgin Islands, Guam, American Samoa, and the Guano Islands, so long as they remain possessions, but does not include any Territory or Commonwealth.

(4) The term "armed forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(5) The term "uniformed services" means—

(A) the armed forces;

(B) the commissioned corps of the National Oceanic and Atmospheric Administration; and

(C) the commissioned corps of the Public Health Service.

(6) The term "department", when used with respect to a military department, means the executive part of the department and all field headquarters, forces, reserve components, installations, activities, and functions under the control or supervision of the Secretary of the department. When used with respect to the Department of Defense, such term means the executive part of the department, including the executive parts of the military departments, and all field headquarters, forces, reserve components, installations, activities, and functions under the control or supervision of the Secretary of Defense, including those of the military departments.

(7) The term "executive part of the department" means the executive part of the Department of Defense, Department of the Army, Department of the Navy, or Department of the Air Force, as the case may be, at the seat of government.

(8) The term "military departments" means the Department of the Army, the Department of the Navy, and the Department of the Air Force.

(9) The term "Secretary concerned" means—

(A) the Secretary of the Army, with respect to matters concerning the Army;

(B) the Secretary of the Navy, with respect to matters concerning the Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Department of the Navy;

(C) the Secretary of the Air Force, with respect to matters concerning the Air Force; and

(D) the Secretary of Transportation, with respect to matters concerning the Coast Guard when it is not operating as a service in the Department of the Navy.

(10) The term "service acquisition executive" means the civilian official within a military department who is designated as the service acquisition executive for purposes of regulations and procedures providing for a service acquisition executive for that military department.

(11) The term "Defense Agency" means an organizational entity of the Department of Defense—

(A) that is established by the Secretary of Defense under section 191 of this title (or under the second sentence of section 125(d) of this title (as in effect before October 1, 1986)) to perform a supply or service activity common to more than one military department (other than such an entity that is designated by the Secretary as a Department of Defense Field Activity); or

(B) that is designated by the Secretary of Defense as a Defense Agency.

(12) The term "Department of Defense Field Activity" means an organizational entity of the Department of Defense—

(A) that is established by the Secretary of Defense under section 191 of this title (or under the second sentence of section 125(d) of this title (as in effect before October 1, 1986)) to perform a supply or service activity common to more than one military department; and

(B) that is designated by the Secretary of Defense as a Department of Defense Field Activity.

(13) The term "contingency operation" means a military operation that—

(A) is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(B) results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of this title, chapter 15 of this title, or any other provision of law during a war or during a national emergency declared by the President or Congress.

(14) The term "supplies" includes material, equipment, and stores of all kinds.

(15) The term "pay" includes basic pay, special pay, retainer pay, incentive pay, retired pay, and equivalent pay, but does not include allowances.

(b) PERSONNEL GENERALLY.—The following definitions relating to military personnel apply in this title:

(1) The term "officer" means a commissioned or warrant officer.

(2) The term "commissioned officer" includes a commissioned warrant officer.

(3) The term "warrant officer" means a person who holds a commission or warrant in a warrant officer grade.

(4) The term "general officer" means an officer of the Army, Air Force, or Marine Corps serving in or having the grade of general, lieutenant general, major general, or brigadier general.

(5) The term "flag officer" means an officer of the Navy or Coast Guard serving in or having the grade of admiral, vice admiral, rear admiral, or rear admiral (lower half).

(6) The term "enlisted member" means a person in an enlisted grade.

(7) The term "grade" means a step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or regulation.

(8) The term "rank" means the order of precedence among members of the armed forces.

(9) The term "rating" means the name (such as "boatswain's mate") prescribed for members of an armed force in an occupational field. The term "rate" means the name (such as "chief boatswain's mate") prescribed for members in the same rating or other category who are in the same grade (such as chief petty officer or seaman apprentice).

(10) The term "original", with respect to the appointment of a member of the armed forces in a regular or reserve component, refers to that member's most recent appointment in that component that is neither a promotion nor a demotion.

(11) The term "authorized strength" means the largest number of members authorized to be in an armed force, a component, a branch, a grade, or any other category of the armed forces.

(12) The term "regular", with respect to an enlistment, appointment, grade, or office, means enlistment, appointment, grade, or office in a regular component of an armed force.

(13) The term "active-duty list" means a single list for the Army, Navy, Air Force, or Marine Corps (required to be maintained under section 620 of this title) which contains the names of all officers of that armed force, other than officers described in section 641 of this title, who are serving on active duty.

(14) The term "medical officer" means an officer of the Medical Corps of the Army, an officer of the Medical Corps of the Navy, or an officer in the Air Force designated as a medical officer.

(15) The term "dental officer" means an officer of the Dental Corps of the Army, an officer of the Dental Corps of the Navy, or an officer of the Air Force designated as a dental officer.

(c) RESERVE COMPONENTS.—The following definitions relating to the reserve components apply in this title:

(1) The term "National Guard" means the Army National Guard and the Air National Guard.

(2) The term "Army National Guard" means that part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that—

(A) is a land force;

(B) is trained, and has its officers appointed, under the sixteenth clause of section 8, article I, of the Constitution;

(C) is organized, armed, and equipped wholly or partly at Federal expense; and

(D) is federally recognized.

(3) The term "Army National Guard of the United States" means the reserve component of the Army all of whose members are members of the Army National Guard.

(4) The term "Air National Guard" means that part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that—

(A) is an air force;

(B) is trained, and has its officers appointed, under the sixteenth clause of section 8, article I, of the Constitution;

(C) is organized, armed, and equipped wholly or partly at Federal expense; and

(D) is federally recognized.

(5) The term "Air National Guard of the United States" means the reserve component of the Air Force all of whose members are members of the Air National Guard.

(6) The term "reserve", with respect to an enlistment, appointment, grade, or office, means enlistment, appointment, grade, or office held as a Reserve of one of the armed forces.

(7) The term "reserve active-status list" means a single list for the Army, Navy, Air Force, or Marine Corps (required to be maintained under section 14002 of this title) that contains the names of all officers of that armed force except warrant officers (including commissioned warrant officers) who are in an active status in a reserve component of the Army, Navy, Air Force, or Marine Corps and are not on an active-duty list.

(d) DUTY STATUS.—The following definitions relating to duty status apply in this title:

(1) The term "active duty" means full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.

(2) The term "active duty for a period of more than 30 days" means active duty under a call or order that does not specify a period of 30 days or less.

(3) The term "active service" means service on active duty or full-time National Guard duty.

(4) The term "active status" means the status of a member of a reserve component who is not in the inactive Army National Guard or inactive Air National Guard, on an inactive status list, or in the Retired Reserve.

(5) The term "full-time National Guard duty" means training or other duty, other than inactive duty, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member's status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia under section 316, 502, 503, 504, or 505 of title 32 for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.

(6)(A) The term "active Guard and Reserve duty" means active duty or full-time National Guard duty performed by a member of a reserve component of the Army, Navy, Air Force, or Marine Corps, or full-time National Guard duty performed by a member of the National Guard, pursuant to an order to active duty or full-time National Guard duty for a period of 180 consecutive days or more for the purpose of organizing, administering, recruiting, instructing, or training the reserve components.

(B) Such term does not include the following:

(i) Duty performed as a member of the Reserve Forces Policy Board provided for under section 10301 of this title.

(ii) Duty performed as a property and fiscal officer under section 708 of title 32.

(iii) Duty performed for the purpose of interdiction and counter-drug activities for which funds have been provided under section 112 of title 32.

(iv) Duty performed as a general or flag officer.

(v) Service as a State director of the Selective Service System under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)).

(7) The term "inactive-duty training" means—

(A) duty prescribed for Reserves by the Secretary concerned under section 206 of title 37 or any other provision of law; and

(B) special additional duties authorized for Reserves by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned.

Such term includes those duties when performed by Reserves in their status as members of the National Guard.

(e) RULES OF CONSTRUCTION.—In this title—

(1) "shall" is used in an imperative sense;

(2) "may" is used in a permissive sense;

(3) "no person may * * *" means that no person is required, authorized, or permitted to do the act prescribed;

(4) "includes" means "includes but is not limited to"; and

(5) "spouse" means husband or wife, as the case may be.

(f) REFERENCE TO TITLE 1 DEFINITIONS.—For other definitions applicable to this title, see sections 1 through 5 of title 1.

(Aug. 10, 1956, 70A Stat. 3; [amended numerous times]; amended in its entirety P.L. 102–484, § 1051(a), Oct. 23, 1992, 106 Stat. 2494; amended P.L. 103–337, §§ 514, 1621, 1671(c)(1), 108 Stat. 2753, 2960, 3014; P.L. 104–106, § 1501(c)(1), Feb. 10, 1996, 110 Stat. 498.)

CHAPTER 2—DEPARTMENT OF DEFENSE

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§ 111. Executive department [1]

(a) The Department of Defense is an executive department of the United States.

(b) The Department is composed of the following:

(1) The Office of the Secretary of Defense.

(2) The Joint Chiefs of Staff.

(3) The Joint Staff.

(4) The Defense Agencies.

(5) Department of Defense Field Activities.

(6) The Department of the Army.

(7) The Department of the Navy.

(8) The Department of the Air Force.

(9) The unified and specified combatant commands.

(10) Such other offices, agencies, activities, and commands as may be established or designated by law or by the President.

(11) All offices, agencies, activities, and commands under the control or supervision of any element named in paragraphs (1) through (10).

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[1] Section 3 of the Goldwater-Nichols Department of Defense Reorganization Act of 1986 (P.L. 99–433; 100 Stat. 993) provides:

SEC. 3. POLICY

In enacting this Act, it is the intent of Congress, consistent with the congressional declaration of policy in section 2 of the National Security Act of 1947 (50 U.S.C. 401)—

(1) to reorganize the Department of Defense and strengthen civilian authority in the Department;

(2) to improve the military advice provided to the President, the National Security Council, and the Secretary of Defense;

(3) to place clear responsibility on the commanders of the unified and specified combatant commands for the accomplishment of missions assigned to those commands;

(4) to ensure that the authority of the commanders of the unified and specified combatant commands is fully commensurate with the responsibility of those commanders for the accomplishment of missions assigned to their commands;

(5) to increase attention to the formulation of strategy and to contingency planning;

(6) to provide for more efficient use of defense resources;

(7) to improve joint officer management policies; and

(8) otherwise to enhance the effectiveness of military operations and improve the management and administration of the Department of Defense.

(c) If the President establishes or designates an office, agency, activity, or command in the Department of Defense of a kind other than those described in paragraphs (1) through (9) of subsection (b), the President shall notify Congress not later than 60 days thereafter.

(Added as § 131 by P.L. 87–651, § 202, Sept. 7, 1962, 76 Stat. 517; transferred, redesignated § 111, and amended P.L. 99–433, § 101(a)(2), (b), Oct. 1, 1986, 100 Stat. 994, 995.)

§ 112. Department of Defense: seal

The Secretary of Defense shall have a seal for the Department of Defense. The design of the seal is subject to approval by the President. Judicial notice shall be taken of the seal.

(Added as § 132 by P.L. 87–651, § 202, Sept. 7, 1962, 76 Stat. 517; transferred, redesignated § 112, and amended P.L. 99–433, §§ 101(a)(2), 110(d)(1), Oct. 1, 1986, 100 Stat. 994, 7002.)

§ 113. Secretary of Defense

(a) There is a Secretary of Defense, who is the head of the Department of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate. A person may not be appointed as Secretary of Defense within 10 years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) The Secretary is the principal assistant to the President in all matters relating to the Department of Defense. Subject to the direction of the President and to this title and section 2 of the National Security Act of 1947 (50 U.S.C. 401), he has authority, direction, and control over the Department of Defense.

(c)(1) The Secretary shall report annually in writing to the President and the Congress on the expenditures, work, and accomplishments of the Department of Defense during the period covered by the report, together with—

(A) a report from each military department on the expenditures, work, and accomplishments of that department;

(B) itemized statements showing the savings of public funds, and the eliminations of unnecessary duplications, made under sections 125 and 191 of this title; and

(C) such recommendations as he considers appropriate.

(2) At the same time that the Secretary submits the annual report under paragraph (1), the Secretary shall transmit to the President and Congress a separate report from the Reserve Forces Policy Board on the reserve programs of the Department of Defense and on any other matters that the Reserve Forces Policy Board considers appropriate to include in the report.

(d) Unless specifically prohibited by law, the Secretary may, without being relieved of his responsibility, perform any of his functions or duties, or exercise any of his powers through, or with the aid of, such persons in, or organizations of, the Department of Defense as he may designate.

(e)(1) The Secretary shall include in his annual report to Congress under subsection (c)—

(A) a description of the major military missions and of the military force structure of the United States for the next fiscal year;

(B) an explanation of the relationship of those military missions to that force structure; and

(C) the justification for those military missions and that force structure.

(2) In preparing the matter referred to in paragraph (1), the Secretary shall take into consideration the content of the annual national security strategy report of the President under section 108 of the National Security Act of 1947 (50 U.S.C. 404a) for the fiscal year concerned.

(f) When a vacancy occurs in an office within the Department of Defense and the office is to be filled by a person appointed from civilian life by the President, by and with the advice and consent of the Senate, the Secretary of Defense shall inform the President of the qualifications needed by a person serving in that office to carry out effectively the duties and responsibilities of that office.

(g)(1) The Secretary of Defense, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, shall provide annually to the heads of Department of Defense components written policy guidance for the preparation and review of the program recommendations and budget proposals of their respective components. Such guidance shall include guidance on—

(A) national security objectives and policies;

(B) the priorities of military missions; and

(C) the resource levels projected to be available for the period of time for which such recommendations and proposals are to be effective.

(2) The Secretary of Defense, with the approval of the President and after consultation with the Chairman of the Joint Chiefs of Staff, shall provide to the Chairman written policy guidance for the preparation and review of contingency plans. Such guidance shall be provided every two years or more frequently as needed and shall include guidance on the specific force levels and specific supporting resource levels projected to be available for the period of time for which such plans are to be effective.

(h) The Secretary of Defense shall keep the Secretaries of the military departments informed with respect to military operations and activities of the Department of Defense that directly affect their respective responsibilities.

(i)(1) The Secretary of Defense shall transmit to Congress each year a report that contains a comprehensive net assessment of the defense capabilities and programs of the armed forces of the United States and its allies as compared with those of their potential adversaries.

(2) Each such report shall—

(A) include a comparison of the defense capabilities and programs of the armed forces of the United States and its allies with the armed forces of potential adversaries of the United States and allies of the United States;

(B) include an examination of the trends experienced in those capabilities and programs during the five years immediately preceding the year in which the report is transmitted and an examination of the expected trends in those capabilities and programs during the period covered by the future-years

defense program submitted to Congress during that year pursuant to section 221 of this title;

(C) include a description of the means by which the Department of Defense will maintain the capability to reconstitute or expand the defense capabilities and programs of the armed forces of the United States on short notice to meet a resurgent or increased threat to the national security of the United States;

(D) reflect, in the overall assessment and in the strategic and regional assessments, the defense capabilities and programs of the armed forces of the United States specified in the budget submitted to Congress under section 1105 of title 31 in the year in which the report is submitted and in the five-year defense program submitted in such year; and

(E) identify the deficiencies in the defense capabilities of the armed forces of the United States in such budget and such five-year defense program.

(3) The Secretary shall transmit to Congress the report required for each year under paragraph (1) at the same time that the President submits the budget to Congress under section 1105 of title 31 in that year. Such report shall be transmitted in both classified and unclassified form.

(j)(1) Not later than April 8 of each year, the Secretary of Defense 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 on the cost of stationing United States forces outside of the United States. Each such report shall include a detailed statement of the following:

(A) Costs incurred in the United States and costs incurred outside the United States in connection with the stationing of United States forces outside the United States.

(B) The costs incurred outside the United States in connection with operating, maintaining, and supporting United States forces outside the United States, including all direct and indirect expenditures of United States funds in connection with such stationing.

(C) The effect of such expenditures outside the United States on the balance of payments of the United States.

(2) Each report under this subsection shall be prepared in consultation with the Secretary of Commerce.

(3) In this subsection, the term "United States", when used in a geographic sense, includes the territories and possessions of the United States.

(k) The Secretary of Defense, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, shall provide annually to the Secretaries of the military departments and to the commanders of the combatant commands written guidelines to direct the effective detection and monitoring of all potential aerial and maritime threats to the national security of the United States. Those guidelines shall include guidance on the specific force levels and specific supporting resources to be made available for the period of time for which the guidelines are to be in effect.

(l) The Secretary shall include in the annual report to Congress under subsection (c) the following:

(1) A comparison of the amounts provided in the defense budget for support and for mission activities for each of the preceding five fiscal years.

(2) A comparison of the number of military and civilian personnel, shown by major occupational category, assigned to support positions and to mission positions for each of the preceding five fiscal years.

(3) An accounting, shown by service and by major occupational category, of the number of military and civilian personnel assigned to support positions during each of the preceding five fiscal years.

(4) A listing of the number of military and civilian personnel assigned to management headquarters and headquarters support activities as a percentage of military end-strength for each of the preceding five fiscal years.

(m) INFORMATION TO ACCOMPANY FUNDING REQUEST FOR CONTINGENCY OPERATION.—Whenever the President submits to Congress a request for appropriations for costs associated with a contingency operation that involves, or likely will involve, the deployment of more than 500 members of the armed forces, the Secretary of Defense shall submit to Congress a report on the objectives of the operation. The report shall include a discussion of the following:

(1) What clear and distinct objectives guide the activities of United States forces in the operation.

(2) What the President has identified on the basis of those objectives as the date, or the set of conditions, that defines the endpoint of the operation.

(Added as § 133 by P.L. 87–651, § 202, Sept. 7, 1962, 76 Stat. 517; amended P.L. 96–513, § 511(3), Dec. 12, 1980, 94 Stat. 2920; P.L. 97–295, § 1(1), Oct. 12, 1982, 96 Stat. 1287; transferred, redesignated § 113, and amended P.L. 99–433, §§ 101(a)(2), 102, 110(d)(2), 301(b)(2), 603(b), Oct. 1, 1986, 100 Stat. 994, 996, 1002, 1022, 1075; P.L. 100–26, § 7(d)(1), April 21, 1987, 101 Stat. 280; P.L. 100–180, § 1214, Dec. 4, 1987, 101 Stat. 1157; P.L. 100–370, § 1(o)(1), July 19, 1988, 102 Stat. 850; P.L. 100–456, §§ 731, 1101, Sept. 29, 1988, 102 Stat. 2003, 2042; P.L. 101–189, § 1622(c)(1), Nov. 29, 1989, 103 Stat. 1604; P.L. 101–510, § 1322(a)(1), Nov. 5, 1990, 104 Stat. 1671; P.L. 102–190, § 341, Dec. 5, 1991, 105 Stat. 1343; P.L. 103–337, §§ 1070(a)(1), 1671(c)(2), 108 Stat. 2855, 3014; P.L. 104–106, §§ 1502(a)(3), 1503(a)(1), Feb. 10, 1996, 110 Stat. 502, 510; P.L. 104–201, § 1255(c), Sept. 23, 1996, 110 Stat. 2698; P.L. 105–85, § 903, Nov. 18, 1997, 111 Stat. 1854; P.L. 105–261, §§ 915(a), 1212(b), Oct. 17, 1998, 112 Stat. 2101, 2152; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 114. Annual authorization of appropriations [2]

(a) No funds may be appropriated for any fiscal year to or for the use of any armed force or obligated or expended for—

(1) procurement of aircraft, missiles, or naval vessels;

[2] Section 1405 of the Department of Defense Authorization Act, 1986 (P.L. 99–145; 99 Stat. 744), provides:

SEC. 1405. [31 U.S.C. 1105 note] TWO-YEAR BUDGET CYCLE FOR THE DEPARTMENT OF DEFENSE

(a) FINDINGS.—The Congress finds that the programs and activities of the Department of Defense could be more effectively and efficiently planned and managed if funds for the Department were provided on a two-year cycle rather than annually.

(b) REQUIREMENTS FOR TWO-YEAR BUDGET PROPOSAL.—The President shall include in the budget submitted to the Congress pursuant to section 1105 of title 31, United States Code, for fiscal year 1988 a single proposed budget for the Department of Defense and related agencies

Continued

(2) any research, development, test, or evaluation, or procurement or production related thereto;

(3) procurement of tracked combat vehicles;

(4) procurement of other weapons;

(5) procurement of naval torpedoes and related support equipment;

(6) military construction;

(7) the operation and maintenance of any armed force or of the activities and agencies of the Department of Defense (other than the military departments);

(8) procurement of ammunition; or

(9) other procurement by any armed force or by the activities and agencies of the Department of Defense (other than the military departments);

unless funds therefor have been specifically authorized by law.

(b) In subsection (a)(6), the term "military construction" includes any construction, development, conversion, or extension of any kind which is carried out with respect to any military facility or installation (including any Government-owned or Government-leased industrial facility used for the production of defense articles and any facility to which section 2353 of this title applies), any activity to which section 2807 of this title applies, any activity to which chapter 1803 of this title applies, and advances to the Secretary of Transportation for the construction of defense access roads under section 210 of title 23. Such term does not include any activity to which section 2821 or 2854 of this title applies.

(c)(1) The size of the Special Defense Acquisition Fund established pursuant to chapter 5 of the Arms Export Control Act (22 U.S.C. 2795 et seq.) may not exceed $1,070,000,000.

(2) Notwithstanding section 37(a) of the Arms Export Control Act (22 U.S.C. 2777(a)), amounts received by the United States pursuant to subparagraph (A) of section 21(a)(1) of that Act (22 U.S.C. 2761(a)(1))—

(A) shall be credited to the Special Defense Acquisition Fund established pursuant to chapter 5 of that Act (22 U.S.C. 2795 et seq.), as authorized by section 51(b)(1) of that Act (22 U.S.C. 2795(b)(1)), but subject to the limitation in paragraph (1) and other applicable law; and

(B) to the extent not so credited, shall be deposited in the Treasury as miscellaneous receipts as provided in section 3302(b) of title 31.

(d) Funds may be appropriated for the armed forces for use as an emergency fund for research, development, test, and evaluation, or related procurement or production, only if the appropriation of the funds is authorized by law after June 30, 1966.

(e) In each budget submitted by the President to Congress under section 1105 of title 31, amounts requested for procurement of equipment for the reserve components of the armed forces (including the National Guard) shall be set forth separately from other amounts requested for procurement for the armed forces.

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for fiscal years 1988 and 1989. Thereafter, the President shall submit a proposed two-year budget for the Department of Defense and related agencies every other year.

(c) REPORT.—[omitted]

(f) In each budget submitted by the President to Congress under section 1105 of title 31, amounts requested for procurement of ammunition for the Navy and Marine Corps, and for procurement of ammunition for the Air Force, shall be set forth separately from other amounts requested for procurement.

(Added as § 138 by P.L. 93–155, § 803(a), Nov. 16, 1973, 87 Stat. 612; [amended numerous times], transferred, redesignated § 114, and amended P.L. 99–433, §§ 101(a)(2), 110(b), Oct. 1, 1986, 100 Stat. 994, 1001, 1002 [former § 138(a), (f)(1), (g), (i)]; amended P.L. 99–661, §§ 105(d), 1304(a), Nov. 14, 1986, 100 Stat. 3827, 3979; P.L. 100–26, § 7(j)(1), April 21, 1987, 101 Stat. 282; P.L. 100–180, § 1203, Dec. 4, 1987, 101 Stat. 1154; P.L. 101–189, § 1602(b), Nov. 29, 1989, 103 Stat. 1597; P.L. 101–510, § 1481(a)(1), Nov. 5, 1990, 104 Stat. 1704; P.L. 104–106, § 1501(c)(2), Feb. 10, 1996, 110 Stat. 498; P.L. 104–201, § 1005, Sept. 23, 1996, 110 Stat. 2632.)

[§ 114a. Transferred to § 221]

§ 115. Personnel strengths: requirement for annual authorization

(a) Congress shall authorize personnel strength levels for each fiscal year for each of the following:

(1)[3] The end strength for each of the armed forces (other than the Coast Guard) for (A) active-duty personnel who are to be paid from funds appropriated for active-duty personnel, and (B) active-duty personnel and full-time National Guard duty personnel who are to be paid from funds appropriated for reserve personnel.

(2) The end strength for the Selected Reserve of each reserve component of the armed forces.

(b) No funds may be appropriated for any fiscal year to or for—

(1) the use of active-duty personnel or full-time National Guard duty personnel of any of the armed forces (other than the Coast Guard) unless the end strength for such personnel of that armed force for that fiscal year has been authorized by law; or

(2) the use of the Selected Reserve of any reserve component of the armed forces unless the end strength for the Selected Reserve of that component for that fiscal year has been authorized by law.

(c) Upon determination by the Secretary of Defense that such action is in the national interest, the Secretary may—

(1) increase the end strength authorized pursuant to subsection (a)(1)(A) for a fiscal year for any of the armed forces by a number equal to not more than 1 percent of that end strength;

(2) increase the end strength authorized pursuant to subsection (a)(1)(B) for a fiscal year for any of the armed forces by a number equal to not more than 2 percent of that end strength; and

(3) vary the end strength authorized pursuant to subsection (a)(2) for a fiscal year for the Selected Reserve of any

[3] Section 401 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654A–92) provides:

The Armed Forces are authorized strengths for active duty personnel as of September 30, 2001, as follows:

(1) The Army, 480,000.
(2) The Navy, 372,642.
(3) The Marine Corps, 172,600.
(4) The Air Force, 357,000.

of the reserve components by a number equal to not more than 2 percent of that end strength.

(d) In counting active-duty personnel for the purpose of the end-strengths authorized pursuant to subsection (a)(1), persons in the following categories shall be excluded:

(1) Members of the Ready Reserve ordered to active duty under section 12302 of this title.

(2) Members of the Selected Reserve of the Ready Reserve ordered to active duty under section 12304 of this title.

(3) Members of the National Guard called into Federal service under section 12406 of this title.

(4) Members of the militia called into Federal service under chapter 15 of this title.

(5) Members of reserve components on active duty for training.

(6) Members of reserve components on active duty for 180 days or less to perform special work.

(7) Members on full-time National Guard duty for 180 days or less.

(8) Members of the Selected Reserve of the Ready Reserve on active duty for more that 180 days to support programs described in section 1203(b) of the Cooperative Threat Reduction Act of 1993 (title XII of Public Law 103–160; 22 U.S.C. 5952(b)).

(9) Members of reserve components (not described in paragraph (8)) on active duty for more than 180 days but less than 271 days to perform special work in support of the combatant commands, except that—

(A) general and flag officers may not be excluded under this paragraph; and

(B) the number of members of any of the armed forces excluded under this paragraph may not exceed the number equal to 0.2 percent of the end strength authorized for active-duty personnel of that armed force under subsection (a)(1)(A).

(e) The authorized strength of the Navy under subsection (a)(1) is increased by the authorized strength of the Coast Guard during any period when the Coast Guard is operating as a service in the Navy.

[(f) Repealed. P.L. 104–106, § 1061(c)(3), Feb. 10, 1996, 110 Stat. 442.]

(g) Congress shall authorize for each fiscal year the end strength for military technicians (dual status) for each reserve component of the Army and Air Force. Funds available to the Department of Defense for any fiscal year may not be used for the pay of a military technician (dual status) during that fiscal year unless the technician fills a position that is within the number of such positions authorized by law for that fiscal year for the reserve component of that technician. This subsection applies without regard to section 129 of this title.[4] In each budget submitted by the Presi-

[4] Section 413 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654A–93) provides:

dent to Congress under section 1105 of title 31, the end strength requested for military technicians (dual status) for each reserve component of the Army and Air Force shall be specifically set forth.

(Added P.L. 99–433, § 110(b), Oct. 1, 1986, 100 Stat. 1002 [former § 138(b)–(d)]; amended P.L. 99–661, § 413, Nov. 14, 1986, 100 Stat. 3861; P.L. 100–26, § 7(j)(2), April 21, 1987, 101 Stat. 283; P.L. 100–456, § 641, Sept. 29, 1988, 102 Stat. 1987; revised in its entirety P.L. 101–510, § 1483(a), Nov. 5, 1990, 104 Stat. 1710; amended P.L. 102–190, § 312(a), Dec. 5, 1991, 105 Stat. 1335; P.L. 104–106, §§ 401(c), 415, 513(a)(1), 1061(c), 1501(c)(3), Feb. 10, 1996, 110 Stat. 286, 288, 305, 442, 498; P.L. 105–85, §§ 413(b), 522(i)(1), Nov. 18, 1997, 111 Stat. 1720, 1736; P.L. 106–65, § 415, Oct. 5, 1999, 113 Stat. 587; P.L. 106–398, § 1[422], Oct. 30, 2000, 114 Stat. 1654, 1654A–96.)

§ 115a. Annual manpower requirements report

(a) The Secretary of Defense shall submit to Congress an annual manpower requirements report. The report, which shall be in writing, shall be submitted each year not later than 45 days after the date on which the President submits to Congress the budget for the next fiscal year under section 1105 of title 31. The report shall contain the Secretary's recommendations for—

(1) the annual active-duty end-strength level for each component of the armed forces for the next fiscal year; and

(2) the annual civilian personnel end-strength level for each component of the Department of Defense for the next fiscal year.

(b)(1) The Secretary shall include in each report under subsection (a) justification for the strength levels recommended and an explanation of the relationship between the personnel strength levels recommended for that fiscal year and the national security policies of the United States in effect at the time.

(2) The justification and explanation shall specify in detail for all major military force units (including each land force division, carrier and other major combatant vessel, air wing, and other comparable unit) the following:

(A) Unit mission and capability.

(B) Strategy which the unit supports.

(3) The justification and explanation shall also specify in detail the manpower required to perform the medical missions of each of the armed forces and of the Department of Defense.

(c) The Secretary shall include in each report under subsection (a) a detailed discussion of the following:

(1) The manpower required for support and overhead functions within the armed forces and the Department of Defense.

(2) The relationship of the manpower required for support and overhead functions to the primary combat missions and support policies.

(3) The manpower required to be stationed or assigned to duty in foreign countries and aboard vessels located outside the territorial limits of the United States, its territories, and possessions.

The minimum number of military technicians (dual status) as of the last day of fiscal year 2001 for the reserve components of the Army and the Air Force (notwithstanding section 129 of title 10, United States Code) shall be the following:

(1) For the Army National Guard of the United States, 23,128.

(2) For the Army Reserve, 5,921.

(3) For the Air National Guard of the United States, 22,247.

(4) For the Air Force Reserve, 9,785.

(d) The Secretary shall also include in each such report, with respect to each armed force under the jurisdiction of the Secretary of a military department, the following:

(1) The number of positions that require warrant officers or commissioned officers serving on active duty in each of the officer grades during the current fiscal year and the estimated number of such positions for each of the next five fiscal years.

(2) The estimated number of officers that will be serving on active duty in each grade on the last day of the current fiscal year and the estimated numbers of officers that will be needed on active duty on the last day of each of the next five fiscal years.

(3) An estimate and analysis for the current fiscal year and for each of the next five fiscal years of gains to and losses from the number of members on active duty in each officer grade, including a tabulation of—

(A) retirements displayed by year of active commissioned service;

(B) discharges;

(C) other separations;

(D) deaths;

(E) promotions; and

(F) reserve and regular officers ordered to active duty.

(e)(1) In each such report, the Secretary shall also include recommendations for the end-strength levels for medical personnel for each component of the armed forces as of the end of the next fiscal year.

(2) For purposes of this subsection, the term "medical personnel" includes—

(A) in the case of the Army, members of the Medical Corps, Dental Corps, Nurse Corps, Medical Service Corps, Veterinary Corps, and Army Medical Specialist Corps;

(B) in the case of the Navy, members of the Medical Corps, Dental Corps, Nurse Corps, and Medical Service Corps;

(C) in the case of the Air Force, members designated as medical officers, dental officers, Air Force nurses, medical service officers, and biomedical science officers;

(D) enlisted members engaged in or supporting medically related activities; and

(E) such other personnel as the Secretary considers appropriate.

[Former subsections (d) and (f) repealed by section 1061(d) of the National Defense Authorization Act for Fiscal Year 1996 (P.L. 104–106; 110 Stat. 442); former subsections (e) and (g) redesignated as subsections (d) and (e).]

(h) In each such report, the Secretary shall include a separate report on the Army and Air Force military technician programs. The report shall include a presentation, shown by reserve component and shown both as of the end of the preceding fiscal year and for the next fiscal year, of the following (displayed in the aggregate and separately for military technicians (dual status) and non-dual status military technicians):

(1) The number of military technicians required to be employed (as specified in accordance with Department of Defense procedures), the number authorized to be employed under Department of Defense personnel procedures, and the number actually employed.

(2) Within each of the numbers under paragraph (1)—

(A) the number applicable to a reserve component management headquarter organization; and

(B) the number applicable to high-priority units and organizations (as specified in section 10216(a) of this title).

(Added P.L. 101–510, § 1483(a), Nov. 5, 1990, 104 Stat. 1711 [former § 115 (b)(1)(D), (b)(3), (c)(2)]; amended P.L. 102–190, § 1061(a)(1), Dec. 5, 1991, 105 Stat. 1472; P.L. 104–106, §§ 513(e), 1061(d), Feb. 10, 1996, 110 Stat. 307, 442; P.L. 105–85, § 522(i)(2), Nov. 18, 1997, 111 Stat. 1736; P.L. 105–261, § 403, Oct. 17, 1998, 112 Stat. 1996.)

[§ 115b. Transferred to § 10541]

§ 116. Annual operations and maintenance report

(a)(1) The Secretary of Defense shall submit to Congress a written report, not later than February 15 of each fiscal year, with respect to the operations and maintenance of the Army, Navy, Air Force, and Marine Corps for the next fiscal year. The Secretary shall include in each such report recommendations for—

(A) the number of aircraft flying hours for the Army, Navy, Air Force, and Marine Corps for the next fiscal year, the number of ship steaming hours for the Navy for the next fiscal year, and the number of field training days for the combat arms battalions of the Army and Marine Corps for the next fiscal year;

(B) the number of ships over 3,000 tons (full load displacement) in each Navy ship classification on which major repair work should be performed during the next fiscal year; and

(C) the number of airframe reworks, aircraft engine reworks, and vehicle overhauls which should be performed by the Army, Navy, Air Force, and Marine Corps during the next fiscal year.

(2) The Secretary shall also include in each such report the justification for and an explanation of the level of funding recommended in the Budget of the President for the next fiscal year for aircraft flying hours, ship steaming hours, field training days for the combat arms battalions, major repair work to be performed on ships of the Navy, airframe reworks, aircraft engine reworks, and vehicle overhauls.

(b) In this section:

(1) The term "combat arms battalions" means armor, infantry, mechanized infantry, air assault infantry, airborne infantry, ranger, artillery, and combat engineer battalions and armored cavalry and air cavalry squadrons.

(2) The term "major repair work" means, in the case of any ship to which subsection (a) is applicable, any overhaul, modification, alteration, or conversion work which will result in a total cost to the United States of more than $10,000,000.

(Added P.L. 99–433, § 110(b), Oct. 1, 1986, 100 Stat. 1002 [former § 138(e), (f)(2)]; amended P.L. 105–85, § 1073(a)(3), Nov. 18, 1997, 111 Stat. 1900.)

§ 117. Readiness reporting system: establishment; reporting to congressional committees[5]

(a) REQUIRED READINESS REPORTING SYSTEM.—The Secretary of Defense shall establish a comprehensive readiness reporting system for the Department of Defense. The readiness reporting system shall measure in an objective, accurate, and timely manner the capability of the armed forces to carry out—

(1) the National Security Strategy prescribed by the President in the most recent annual national security strategy report under section 108 of the National Security Act of 1947 (50 U.S.C. 404a);

(2) the defense planning guidance provided by the Secretary of Defense pursuant to section 113(g) of this title; and

(3) the National Military Strategy prescribed by the Chairman of the Joint Chiefs of Staff.

(b) READINESS REPORTING SYSTEM CHARACTERISTICS.—In establishing the readiness reporting system, the Secretary shall ensure—

(1) that the readiness reporting system is applied uniformly throughout the Department of Defense;

(2) that information in the readiness reporting system is continually updated, with (A) any change in the overall readiness status of a unit that is required to be reported as part of the readiness reporting system being reported within 24 hours of the event necessitating the change in readiness status, and (B) any change in the overall readiness status of an element of the training establishment or an element of defense infrastructure that is required to be reported as part of the readiness reporting system being reported within 72 hours of the event necessitating the change in readiness status; and

(3) that sufficient resources are provided to establish and maintain the system so as to allow reporting of changes in readiness status as required by this section.

(c) CAPABILITIES.—The readiness reporting system shall measure such factors relating to readiness as the Secretary prescribes, except that the system shall include the capability to do each of the following:

(1) Measure, on a monthly basis, the capability of units (both as elements of their respective armed force and as elements of joint forces) to conduct their assigned wartime missions.

(2) Measure, on an annual basis, the capability of training establishments to provide trained and ready forces for wartime missions.

(3) Measure, on an annual basis, the capability of defense installations and facilities and other elements of Department of Defense infrastructure, both in the United States and abroad,

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[5] Section 373(b) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (P.L. 105–261; 112 Stat. 1992), as amended, provides:

(b) IMPLEMENTATION.—The Secretary of Defense shall establish and implement the readiness reporting system required by section 117 of title 10, United States Code, as added by subsection (a), so as to ensure that the capabilities required by subsection (c) of that section are attained not later than April 1, 2000.

to provide appropriate support to forces in the conduct of their wartime missions.

(4) Measure, on a monthly basis, critical warfighting deficiencies in unit capability.

(5) Measure, on an annual basis, critical warfighting deficiencies in training establishments and defense infrastructure.

(6) Measure, on a monthly basis, the level of current risk based upon the readiness reporting system relative to the capability of forces to carry out their wartime missions.

(7) Measure, on a quarterly basis, the extent to which units of the armed forces remove serviceable parts, supplies, or equipment from one vehicle, vessel, or aircraft in order to render a different vehicle, vessel, or aircraft operational.

(d) QUARTERLY AND MONTHLY JOINT READINESS REVIEWS.—(1) The Chairman of the Joint Chiefs of Staff shall—

(A) on a quarterly basis, conduct a joint readiness review; and

(B) on a monthly basis, review any changes that have been reported in readiness since the previous joint readiness review.

(2) The Chairman shall incorporate into both the joint readiness review required under paragraph (1)(A) and the monthly review required under paragraph (1)(B) the current information derived from the readiness reporting system and shall assess the capability of the armed forces to execute their wartime missions based upon their posture at the time the review is conducted. The Chairman shall submit to the Secretary of Defense the results of each review under paragraph (1), including the deficiencies in readiness identified during that review.

(e) SUBMISSION TO CONGRESSIONAL COMMITTEES.—The Secretary shall each month 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 in writing containing the results of the most recent joint readiness review or monthly review conducted under subsection (d), including the current information derived from the readiness reporting system. Each such report shall be submitted in unclassified form and may, as the Secretary determines necessary, also be submitted in classified form.

(f) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section. In those regulations, the Secretary shall prescribe the units that are subject to reporting in the readiness reporting system, what type of equipment is subject to such reporting, and the elements of the training establishment and of defense infrastructure that are subject to such reporting.

(Added P.L. 105–261, § 373(a)(1), Oct. 17, 1998, 115 Stat. 1990; amended P.L. 106–65, §§ 361(d)(1), 1067(1), Oct. 5, 1999, 113 Stat. 575, 774; P.L. 106–398, § 1[371], Oct. 30, 2000, 114 Stat. 1654, 1654A–80.)

§ 118. Quadrennial defense review

(a) REVIEW REQUIRED.—The Secretary of Defense shall every four years, during a year following a year evenly divisible by four, conduct a comprehensive examination (to be known as a "quadrennial defense review") of the national defense strategy, force structure, force modernization plans, infrastructure, budget plan, and

other elements of the defense program and policies of the United States with a view toward determining and expressing the defense strategy of the United States and establishing a defense program for the next 20 years. Each such quadrennial defense review shall be conducted in consultation with the Chairman of the Joint Chiefs of Staff.

(b) CONDUCT OF REVIEW.—Each quadrennial defense review shall be conducted so as—

(1) to delineate a national defense strategy consistent with the most recent National Security Strategy prescribed by the President pursuant to section 108 of the National Security Act of 1947 (50 U.S.C. 404a);

(2) to define sufficient force structure, force modernization plans, infrastructure, budget plan, and other elements of the defense program of the United States associated with that national defense strategy that would be required to execute successfully the full range of missions called for in that national defense strategy; and

(3) to identify (A) the budget plan that would be required to provide sufficient resources to execute successfully the full range of missions called for in that national defense strategy at a low-to-moderate level of risk, and (B) any additional resources (beyond those programmed in the current future-years defense program) required to achieve such a level of risk.

(c) ASSESSMENT OF RISK.—The assessment of risk for the purposes of subsection (b) shall be undertaken by the Secretary of Defense in consultation with the Chairman of the Joint Chiefs of Staff. That assessment shall define the nature and magnitude of the political, strategic, and military risks associated with executing the missions called for under the national defense strategy.

(d) SUBMISSION OF QDR TO CONGRESSIONAL COMMITTEES.—The Secretary shall submit a report on each quadrennial defense review to the Committees on Armed Services of the Senate and the House of Representatives. The report shall be submitted not later than September 30 of the year in which the review is conducted. The report shall include the following:

(1) The results of the review, including a comprehensive discussion of the national defense strategy of the United States and the force structure best suited to implement that strategy at a low-to-moderate level of risk.

(2) The assumed or defined national security interests of the United States that inform the national defense strategy defined in the review.

(3) The threats to the assumed or defined national security interests of the United States that were examined for the purposes of the review and the scenarios developed in the examination of those threats.

(4) The assumptions used in the review, including assumptions relating to—

(A) the status of readiness of United States forces;

(B) the cooperation of allies, mission-sharing and additional benefits to and burdens on United States forces resulting from coalition operations;

(C) warning times;

(D) levels of engagement in operations other than war and smaller-scale contingencies and withdrawal from such operations and contingencies; and

(E) the intensity, duration, and military and political end-states of conflicts and smaller-scale contingencies.

(5) The effect on the force structure and on readiness for high-intensity combat of preparations for and participation in operations other than war and smaller-scale contingencies.

(6) The manpower and sustainment policies required under the national defense strategy to support engagement in conflicts lasting longer than 120 days.

(7) The anticipated roles and missions of the reserve components in the national defense strategy and the strength, capabilities, and equipment necessary to assure that the reserve components can capably discharge those roles and missions.

(8) The appropriate ratio of combat forces to support forces (commonly referred to as the "tooth-to-tail" ratio) under the national defense strategy, including, in particular, the appropriate number and size of headquarters units and Defense Agencies for that purpose.

(9) The strategic and tactical air-lift, sea-lift, and ground transportation capabilities required to support the national defense strategy.

(10) The forward presence, pre-positioning, and other anticipatory deployments necessary under the national defense strategy for conflict deterrence and adequate military response to anticipated conflicts.

(11) The extent to which resources must be shifted among two or more theaters under the national defense strategy in the event of conflict in such theaters.

(12) The advisability of revisions to the Unified Command Plan as a result of the national defense strategy.

(13) The effect on force structure of the use by the armed forces of technologies anticipated to be available for the ensuing 20 years.[6]

(14) Any other matter the Secretary considers appropriate.

(e) CJCS REVIEW.—Upon the completion of each review under subsection (a), the Chairman of the Joint Chiefs of Staff shall prepare and submit to the Secretary of Defense the Chairman's assessment of the review, including the Chairman's assessment of risk. The Chairman's assessment shall be submitted to the Secretary in time for the inclusion of the assessment in the report. The Secretary shall include the Chairman's assessment, together with the Secretary's comments, in the report in its entirety.

(Added P.L. 106–65, § 901(a)(1) Oct. 5, 1999, 113 Stat. 715.)

[6] Section 901(c) of the National Defense Authorization Act for Fiscal Year 2000 (P.L. 106–65; 113 Stat. 717) provides:

(c) SPECIFIED MATTER FOR NEXT QDR.—In the first quadrennial defense review conducted under section 118 of title 10, United States Code, as added by subsection (a), the Secretary shall include in the technologies considered for the purposes of paragraph (13) of subsection (d) of that section the following: precision guided munitions, stealth, night vision, digitization, and communications.

§ 119. Special access programs: congressional oversight

(a)(1) Not later than March 1 of each year, the Secretary of Defense shall submit to the defense committees a report on special access programs.

(2) Each such report shall set forth—

(A) the total amount requested for special access programs of the Department of Defense in the President's budget for the next fiscal year submitted under section 1105 of title 31; and

(B) for each program in that budget that is a special access program—

(i) a brief description of the program;

(ii) a brief discussion of the major milestones established for the program;

(iii) the actual cost of the program for each fiscal year during which the program has been conducted before the fiscal year during which that budget is submitted; and

(iv) the estimated total cost of the program and the estimated cost of the program for (I) the current fiscal year, (II) the fiscal year for which the budget is submitted, and (III) each of the four succeeding fiscal years during which the program is expected to be conducted.

(3) In the case of a report under paragraph (1) submitted in a year during which the President's budget for the next fiscal year, because of multiyear budgeting for the Department of Defense, does not include a full budget request for the Department of Defense, the report required by paragraph (1) shall set forth—

(A) the total amount already appropriated for the next fiscal year for special access programs of the Department of Defense and any additional amount requested in that budget for such programs for such fiscal year; and

(B) for each program of the Department of Defense that is a special access program, the information specified in paragraph (2)(B).

(b)(1) Not later than February 1 of each year, the Secretary of Defense shall submit to the defense committees a report that, with respect to each new special access program, provides—

(A) notice of the designation of the program as a special access program; and

(B) justification for such designation.

(2) A report under paragraph (1) with respect to a program shall include—

(A) the current estimate of the total program cost for the program; and

(B) an identification of existing programs or technologies that are similar to the technology, or that have a mission similar to the mission, of the program that is the subject of the notice.

(3) In this subsection, the term "new special access program" means a special access program that has not previously been covered in a notice and justification under this subsection.

(c)(1) Whenever a change in the classification of a special access program of the Department of Defense is planned to be made or whenever classified information concerning a special access pro-

gram of the Department of Defense is to be declassified and made public, the Secretary of Defense shall submit to the defense committees a report containing a description of the proposed change, the reasons for the proposed change, and notice of any public announcement planned to be made with respect to the proposed change.

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

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

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

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

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

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

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

(2) a period of 30 days elapses after such notification is received.[7]

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

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

[7] Section 8007 of the Department of Defense Appropriations Act, 2001 (P.L. 106–259; 114 Stat. 675), provides:

SEC. 8007. Funds appropriated by this Act may not be used to initiate a special access program without prior notification 30 calendar days in session in advance to the congressional defense committees.

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

(Added P.L. 100–180, § 1132(a), Dec. 4, 1987, 101 Stat. 1151; amended P.L. 101–510, §§ 1461, 1482(a), Nov. 5, 1990, 104 Stat. 1698, 1709; P.L. 104–106, §§ 1055, 1502(a)(4), Feb. 10, 1996, 110 Stat. 442, 502; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

CHAPTER 3—GENERAL POWERS AND FUNCTIONS

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§ 121. Regulations

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

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

§ 122. Official registers

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

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

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

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

Reserve. So long as such war or national emergency continues, any such suspension may be extended by the President.

(b) Any such suspension shall, if not sooner ended, end on the last day of the two-year period beginning on the date on which the suspension (or the last extension thereof) takes effect or on the last day of the one-year period beginning on the date of the termination of the war or national emergency, whichever occurs first. With respect to the end of any such suspension, the preceding sentence supersedes the provisions of title II of the National Emergencies Act (50 U.S.C. 1621–1622) which provide that powers or authorities exercised by reason of a national emergency shall cease to be exercised after the date of the termination of the emergency.

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

(Added P.L. 85–861, § 1(2)(A), Sept. 2, 1958, 72 Stat. 1437; amended P.L. 86–559, § 1(1), June 30, 1960, 74 Stat. 264; P.L. 89–718, § 1, Nov. 2, 1966, 80 Stat. 1115; P.L. 90–130, § 1(1), Nov. 8, 1967, 81 Stat. 374; P.L. 96–513, §§ 501(3), 511(1), Dec. 12, 1980, 94 Stat. 2907, 2920; P.L. 97–22, § 10(b)(1), July 10, 1981, 95 Stat. 137; amended in its entirety P.L. 103–337, § 1622(a), Oct. 5, 1994, 108 Stat. 2961; P.L. 104–106, § 1501(c)(4), Feb. 10, 1996, 110 Stat. 498.)

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

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.

(Added P.L. 101–510, § 1483(b)(1), Nov. 5, 1990, 104 Stat. 1715 [former § 115(b)(4)].)

§ 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 P.L. 103–337, § 1312(a), Oct. 5, 1994, 108 Stat. 2894.)

§ 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 P.L. 101–189, § 1202(a)(1), Nov. 29, 1989, 103 Stat. 1563 [former § 124 repealed by § 211(c)(1) of P.L. 99–433 (see ch. 6)]; amended P.L. 102–190, § 1088(b), Dec. 5, 1991, 105 Stat. 1485.)

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

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

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

(c) Notwithstanding subsection (a), the Secretary of Defense may assign or reassign the development and operational use of new

weapons or weapons systems to one or more of the military departments or one or more of the armed forces.

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

§ 126. Transfer of funds and employees

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

(1) be credited to any applicable appropriation account of the receiving department or agency; or

(2) be credited to a new account that may be established on the books of the Department of the Treasury;

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

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

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

§ 127. Emergency and extraordinary expenses

(a) Subject to the limitations of subsection (c), and within the limitation of appropriations made for the purpose, the Secretary of Defense, the Inspector General of the Department of Defense, and the Secretary of a military department within his department, may provide for any emergency or extraordinary expense which cannot be anticipated or classified. When it is so provided in such an

appropriation, the funds may be spent on approval or authority of the Secretary concerned or the Inspector General for any purpose he determines to be proper, and such a determination is final and conclusive upon the accounting officers of the United States. The Secretary concerned or the Inspector General may certify the amount of any such expenditure authorized by him that he considers advisable not to specify, and his certificate is sufficient voucher for the expenditure of that amount.

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

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

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

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

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

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

(d) In any case in which funds are expended under the authority of subsections (a) and (b), the Secretary of Defense shall submit a report of such expenditures on a quarterly basis to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(Added as § 140 by P.L. 94–106, § 804(a), Oct. 7, 1975, 89 Stat. 538; amended P.L. 98–94, § 1268(2), Sept. 24, 1983, 97 Stat. 705; transferred, redesignated § 127; amended P.L. 99–433, §§ 101(a)(3), 110(d)(4), Oct. 1, 1986, 100 Stat. 994, 1002; P.L. 103–160, § 361, Nov. 30, 1993, 107 Stat. 1627; P.L. 103–337, § 378, Oct. 5, 1994, 108 Stat. 2737; P.L. 104–106, §§ 915, 1502(a)(5), Feb. 10, 1996, 110 Stat. 413, 502; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

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

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

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

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

(2) This section applies to—

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

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

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

(3) Whenever an operation to which this section applies is commenced or subsequently becomes covered by this section, the Secretary of Defense shall designate and identify that operation for the purposes of this section and shall promptly notify Congress of that designation (and of the identification of the operation).

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

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

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

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

be available for the same purposes as the accounts to which transferred.

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

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

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

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

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

(d) REPORT UPON DESIGNATION OF AN OPERATION.—Within 45 days after the Secretary of Defense identifies an operation pursuant to subsection (a)(2), the Secretary of Defense shall submit to Congress a report that sets forth the following:

(1) The manner by which the Secretary proposes to obtain funds for the cost to the United States of the operation, including a specific discussion of how the Secretary proposes to restore balances in—

(A) the Defense Business Operations Fund (or a successor fund), or

(B) the accounts from which the Secretary transfers funds under the authority of subsection (c), to the levels that would have been anticipated but for the provisions of subsection (c).

(2) If the operation is described in subsection (a)(1)(B), a justification why the budgetary resources of another department or agency of the Federal Government, instead of resources of the Department of Defense, are not being used for carrying out the operation.

(3) The objectives of the operation.

(4) The estimated duration of the operation and of any deployment of armed forces personnel in such operation.

(5) The estimated incremental cost of the operation to the United States.

(6) The exit criteria for the operation and for the withdrawal of the elements of the armed forces involved in the operation.

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

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

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

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

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

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

(Added P.L. 103–160, § 1108(a), Nov. 30, 1993, 107 Stat. 1751; amended in its entirety P.L. 104–106, § 1003(a), Feb. 10, 1996, 110 Stat. 415.)

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

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

cluding security plans, procedures, and equipment for the physical protection of special nuclear material.

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

(A) illegal production of nuclear weapons, or

(B) theft, diversion, or sabotage of special nuclear materials, equipment, or facilities.

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

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

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

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

(i) illegal production of nuclear weapons, or

(ii) theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

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

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

(d) The Secretary shall prepare on an annual basis a report to be made available upon the request of any interested person, detailing the Secretary's application during that period of each regulation or order prescribed or issued under this section. In particular, such report shall—

(1) identify any information protected from disclosure pursuant to such regulation or order;

(2) specifically state the Secretary's justification for determining that unauthorized dissemination of the information protected from disclosure under such regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of illegal production of nuclear weapons or the theft, diversion, or sabotage of special nuclear materials, equipment, or facilities, as specified under subsection (a); and

(3) provide justification that the Secretary has applied such regulation or order so as to protect from disclosure only the minimum amount of information necessary to protect the health and safety of the public or the common defense and security.

(Added P.L. 100–180, § 1123(a), Dec. 4, 1987, 101 Stat. 1149; amended P.L. 101–510, § 1311(1), Nov. 5, 1990, 104 Stat. 1669.)

§ 129. Prohibition of certain civilian personnel management constraints

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

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

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

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

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

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

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

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

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

(e) Subsections (a), (b), and (c) apply to the Major Range and Test Facility Base (MRTFB) at the installation level. With respect to the MRTFB structure, the term "funds made available" includes both direct appropriated funds and funds provided by MRTFB customers.

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

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

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

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

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

(Added as § 140b by P.L. 97–86, § 904(a), Dec. 1, 1981, 95 Stat. 1114; transferred and redesignated § 129 P.L. 99–433, § 101(a)(3), Oct. 1, 1986, 100 Stat. 994; amended P.L. 99–661, § 533, Nov. 14, 1986, 100 Stat. 3873; P.L. 102–190, § 312(b), Dec. 5, 1991, 105 Stat. 1335; P.L. 104–106, § 1031, Feb. 10, 1996, 110 Stat. 428; P.L. 104–201, §§ 1074(a)(1), 1604, Sept. 23, 1996, 110 Stat. 2658, 2635; P.L. 105–85, § 1101, Nov. 18, 1997, 111 Stat. 1922; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 129a. General personnel policy

The Secretary of Defense shall use the least costly form of personnel consistent with military requirements and other needs of the Department. In developing the annual personnel authorization requests to Congress and in carrying out personnel policies, the Secretary shall—

(1) consider particularly the advantages of converting from one form of personnel (military, civilian, or private contract) to another for the performance of a specified job; and

(2) include in each manpower requirements report submitted under section 115a of this title a complete justification for converting from one form of personnel to another.

(Added P.L. 101–510, § 1483(b)(2), Nov. 5, 1990, 104 Stat. 1715 [former § 115(b)(5)].)

§ 129b. Experts and consultants: authority to procure services of

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

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

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

(b) CONDITIONS.—The services of experts or consultants (or organizations thereof) may be procured under subsection (a) only if

the Secretary of Defense or the Secretary of the military department concerned, as the case may be, determines that—

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

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

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

(Added P.L. 101–510, § 1481(b), Nov. 5, 1990, 104 Stat. 1704; amended P.L. 102–190, § 1061(a)(2), Dec. 5, 1991, 105 Stat. 1472.)

§ 129c. Medical personnel: limitations on reductions

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

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

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

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

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

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

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

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

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

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

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

(Added P.L. 104–106, § 564(a)(1), Feb. 10, 1996, 110 Stat. 326; amended P.L. 105–85, § 1073(a)(4), Nov. 18, 1997, 111 Stat. 1900.)

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

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

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

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

(Added as § 140c by P.L. 98–94, § 1217(a), Sept. 24, 1983, 97 Stat. 690; amended P.L. 99–145, § 1303(a)(3), Nov. 8, 1985, 99 Stat. 738; transferred, redesignated § 130; amended P.L. 99–433, §§ 101(a)(3), 110(d)(6), Oct. 1, 1986, 100 Stat. 994, 1003; amended P.L. 100–26, § 7(k)(3), April 21, 1987, 101 Stat. 284; P.L. 101–510, § 1484(b)(1), Nov. 5, 1990, 104 Stat. 1715.)

§ 130a. Major Department of Defense headquarters activities personnel: limitation

(a) LIMITATION.—Effective October 1, 2002, the number of major headquarters activities personnel in the Department of Defense may not exceed 85 percent of the baseline number.

(b) PHASED REDUCTION.—The number of major headquarters activities personnel in the Department of Defense—

(1) as of October 1, 2000, may not exceed 95 percent of the baseline number; and

(2) as of October 1, 2001, may not exceed 90 percent of the baseline number.

(c) BASELINE NUMBER.—In this section, the term "baseline number" means the number of major headquarters activities personnel in the Department of Defense as of October 1, 1999.

(d) MAJOR HEADQUARTERS ACTIVITIES.—(1) For purposes of this section, major headquarters activities are those headquarters (and the direct support integral to their operation) the primary mission of which is to manage or command the programs and operations of the Department of Defense, the Department of Defense components, and their major military units, organizations, or agencies. Such term includes management headquarters, combatant headquarters, and direct support.

(2) The specific elements of the Department of Defense that are major headquarters activities for the purposes of this section are those elements identified as Major DoD Headquarters Activities in accordance with Department of Defense Directive 5100.73, entitled "Major Department of Defense Headquarters Activities", issued on May 13, 1999. The provisions of that directive applicable to identification of any activity as a "Major DoD Headquarters Activity" may not be changed except as provided by law.

(e) MAJOR HEADQUARTERS ACTIVITIES PERSONNEL.—In this section, the term "major headquarters activities personnel" means military and civilian personnel of the Department of Defense who are assigned to, or employed in, functions in major headquarters activities.

(f) LIMITATION ON REASSIGNMENT OF FUNCTIONS.—In carrying out reductions in the number of personnel assigned to, or employed in, major headquarters activities in order to comply with this section, the Secretary of Defense and the Secretaries of the military departments may not reassign functions in order to evade the requirements of this section.

(g) FLEXIBILITY.—(1) If during fiscal year 2001 or fiscal year 2002 the Secretary of Defense determines, and certifies to Congress, that the limitation under subsection (a), or a limitation under subsection (b), would adversely affect United States national security, the Secretary may take any of the following actions:

(A) Increase the percentage specified in subsection (b)(1) by such amount as the Secretary determines necessary or waive the limitation under that subsection.

(B) Increase the percentage specified in subsection (b)(2) by such amount as the Secretary determines necessary, not to exceed a cumulative increase of 7.5 percentage points.

(C) Increase the percentage specified in subsection (a) by such amount as the Secretary determines necessary, not to exceed a cumulative increase of 7.5 percentage points.

(2) Any certification under paragraph (1) shall include notice of the specific waiver or increases made pursuant to the authority provided in that paragraph.

(Added P.L. 105–85, § 911(a)(1), Nov. 18, 1997, 111 Stat. 1857; amended in its entirety P.L. 106–65, § 921(a)(1), Oct. 5, 1999, 113 Stat. 722; amended P.L. 106–398, § 1[941], Oct. 30, 2000, 114 Stat. 1654, 1654A–241.)

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

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

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

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

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

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

(c) DEFINITIONS.—In this section:

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

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

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

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

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

(B) a unit engaged in training—

(i) special operations units;

(ii) security group commands weapons stations; or

(iii) communications stations; and

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

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

(Added P.L. 106–65, § 1044(a), Oct. 5, 1999, 113 Stat. 761.)

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

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

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

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

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

the foreign government or international organization to that effect).

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

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

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

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

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

(d) LIMITATIONS.—(1) If a request for disclosure covers any sensitive information of a foreign government (as described in subsection (b)) that came into the possession or under the control of the United States Government before the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 and more than 25 years before the request is received by an agency, the information may be withheld only as set forth in paragraph (3).

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

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

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

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

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

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

(e) INFORMATION PROTECTED UNDER OTHER AUTHORITY.—This section does not apply to information or matters that are specifically required in the interest of national defense or foreign policy to be protected against unauthorized disclosure under criteria established by an Executive order and are classified, properly, at the confidential, secret, or top secret level pursuant to such Executive order.

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

(1) Congress.

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

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

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

(h) DEFINITIONS.—In this section:

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

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

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

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

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

(3) The term "international organization" means the following:

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

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

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

(Added P.L. 106–398, § 1[1073(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–277.)

CHAPTER 4—OFFICE OF THE SECRETARY OF DEFENSE

Sec.
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§ 131. Office of the Secretary of Defense

(a) There is in the Department of Defense an Office of the Secretary of Defense. The function of the Office is to assist the Secretary of Defense in carrying out his duties and responsibilities and to carry out such other duties as may be prescribed by law.

(b) The Office of the Secretary of Defense is composed of the following:

(1) The Deputy Secretary of Defense.

(2) The Under Secretary of Defense for Acquisition, Technology, and Logistics.

(3) The Under Secretary of Defense for Policy.

(4) The Under Secretary of Defense (Comptroller).

(5) The Under Secretary of Defense for Personnel and Readiness.

(6) The Director of Defense Research and Engineering.

(7) The Assistant Secretaries of Defense.

(8) The Director of Operational Test and Evaluation.

(9) The General Counsel of the Department of Defense.

(10) The Inspector General of the Department of Defense.

(11) Such other offices and officials as may be established by law or the Secretary of Defense may establish or designate in the Office.

(c) Officers of the armed forces may be assigned or detailed to permanent duty in the Office of the Secretary of Defense. However, the Secretary may not establish a military staff in the Office of the Secretary of Defense.

(d) The Secretary of each military department, and the civilian employees and members of the armed forces under the jurisdiction of the Secretary, shall cooperate fully with personnel of the Office of the Secretary of Defense to achieve efficient administration of

the Department of Defense and to carry out effectively the authority, direction, and control of the Secretary of Defense.

(Added P.L. 99–433, § 104, Oct. 1, 1986, 100 Stat. 996 [former § 131 transferred to § 111]; amended P.L. 103–160, § 906(a), Nov. 30, 1993, 107 Stat. 1729; P.L. 103–337, § 903(b)(1), Oct. 5, 1994, 108 Stat. 2823; P.L. 106–65, § 911(d)(1), Oct. 5, 1999, 113 Stat. 719.)

§ 132. Deputy Secretary of Defense

(a) There is a Deputy Secretary of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate. A person may not be appointed as Deputy Secretary of Defense within ten years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) The Deputy Secretary shall perform such duties and exercise such powers as the Secretary of Defense may prescribe. The Deputy Secretary shall act for, and exercise the powers of, the Secretary when the Secretary is disabled or there is no Secretary of Defense.

(c) The Deputy Secretary takes precedence in the Department of Defense immediately after the Secretary.

(Added as § 134 by P.L. 87–651, § 202, Sept. 7, 1962, 76 Stat. 518; amended P.L. 92–596, § 4(1), Oct. 27, 1972, 86 Stat. 1318; P.L. 95–140, § 1(a), Oct. 21, 1977, 91 Stat. 1172; redesignated § 132 and amended P.L. 99–433, §§ 101(a)(7), 110(d)(7), Oct. 1, 1986, 100 Stat. 995, 1003 [former § 132 transferred to § 112].)

§ 133. Under Secretary of Defense for Acquisition, Technology, and Logistics

(a) There is an Under Secretary of Defense for Acquisition, Technology, and Logistics, appointed from civilian life by the President, by and with the advice and consent of the Senate. The Under Secretary shall be appointed from among persons who have an extensive management background in the private sector.

(b) Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall perform such duties and exercise such powers relating to acquisition as the Secretary of Defense may prescribe, including—

(1) supervising Department of Defense acquisition;

(2) establishing policies for acquisition (including procurement, research and development, developmental testing, and contract administration) for all elements of the Department of Defense;

(3) establishing policies for logistics, maintenance, and sustainment support for all elements of the Department of Defense;

(4) establishing policies of the Department of Defense for maintenance of the defense industrial base of the United States; and

(5) the authority to direct the Secretaries of the military departments and the heads of all other elements of the Department of Defense with regard to matters for which the Under Secretary has responsibility.

(c) The Under Secretary—

(1) is the senior procurement executive for the Department of Defense for the purposes of section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3));

(2) is the Defense Acquisition Executive for purposes of regulations and procedures of the Department providing for a Defense Acquisition Executive; and

(3) to the extent directed by the Secretary, exercises overall supervision of all personnel (civilian and military) in the Office of the Secretary of Defense with regard to matters for which the Under Secretary has responsibility, unless otherwise provided by law.

(d)(1) The Under Secretary shall prescribe policies to ensure that audit and oversight of contractor activities are coordinated and carried out in a manner to prevent duplication by different elements of the Department. Such policies shall provide for coordination of the annual plans developed by each such element for the conduct of audit and oversight functions within each contracting activity.

(2) In carrying out this subsection, the Under Secretary shall consult with the Inspector General of the Department of Defense.

(3) Nothing in this subsection shall affect the authority of the Inspector General of the Department of Defense to establish audit policy for the Department of Defense under the Inspector General Act of 1978 and otherwise to carry out the functions of the Inspector General under that Act.

(e)(1) With regard to all matters for which he has responsibility by law or by direction of the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics takes precedence in the Department of Defense after the Secretary of Defense and the Deputy Secretary of Defense.

(2) With regard to all matters other than matters for which he has responsibility by law or by direction of the Secretary of Defense, the Under Secretary takes precedence in the Department of Defense after the Secretary of Defense, the Deputy Secretary of Defense, and the Secretaries of the military departments.

(Added as § 134a by P.L. 99–348, § 501, July 1, 1986, 100 Stat. 707; redesignated § 133; amended P.L. 99–433, §§ 101(a)(7), 110 (c)(1), (d)(8), 100 Stat. 995, 1002, 1003 [former § 133 transferred to § 113]; revised in entirety by identical amendments P.L. 99–500, 99–591, 99–661, § 101(c) [§ 901], § 101(c) [§ 901], § 901, Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–130, 3341–130, 3910; amended P.L. 100–456, § 809(d), Sept. 29, 1988, 102 Stat. 2013; P.L. 103–160, § 904(b), Nov. 30, 1993, 107 Stat. 1728; P.L. 106–65, § 911(a)(2), (d)(2), Oct. 5, 1999, 113 Stat. 717, 719.)

§ 133a. Deputy Under Secretary of Defense for Acquisition and Technology

(a) There is a Deputy Under Secretary of Defense for Acquisition and Technology, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The Deputy Under Secretary of Defense for Acquisition and Technology shall assist the Under Secretary of Defense for Acquisition and Technology in the performance of the Under Secretary's duties relating to acquisition and technology.

(Added by identical amendments P.L. 99–500, 99–591, 99–661, § 101(c) [§ 902(a)], § 101(c) [§ 902(a)], § 902(a), Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–131, 3341–131, 3910 [former § 133a transferred to § 117]; amended P.L. 103–160, § 904(c), Nov. 30, 1993, 107 Stat. 1728; P.L. 103–337, § 1070(a)(2), Oct. 5, 1994, 108 Stat. 2855; P.L. 106–65, § 911(c), Oct. 5, 1999, 113 Stat. 718.)

§ 133b. Deputy Under Secretary of Defense for Logistics and Materiel Readiness

(a) There is a Deputy Under Secretary of Defense for Logistics and Materiel Readiness, appointed from civilian life by the President, by and with the advice and consent of the Senate. The Deputy Under Secretary shall be appointed from among persons with an extensive background in the sustainment of major weapon systems and combat support equipment.

(b) The Deputy Under Secretary is the principal adviser to the Secretary and the Under Secretary of Defense for Acquisition, Technology, and Logistics on logistics and materiel readiness in the Department of Defense and is the principal logistics official within the senior management of the Department of Defense.

(c) The Deputy Under Secretary shall perform such duties relating to logistics and materiel readiness as the Under Secretary of Defense for Acquisition, Technology, and Logistics may assign, including—

(1) prescribing, by authority of the Secretary of Defense, policies and procedures for the conduct of logistics, maintenance, materiel readiness, and sustainment support in the Department of Defense;

(2) advising and assisting the Secretary of Defense, the Deputy Secretary of Defense, and the Under Secretary of Defense for Acquisition, Technology, and Logistics providing guidance to and consulting with the Secretaries of the military departments, with respect to logistics, maintenance, materiel readiness, and sustainment support in the Department of Defense; and

(3) monitoring and reviewing all logistics, maintenance, materiel readiness, and sustainment support programs in the Department of Defense.

(Added P.L. 106–65, § 911(b)(1), Oct. 5, 1999, 113 Stat. 718.)

§ 134. Under Secretary of Defense for Policy

(a) There is an Under Secretary of Defense for Policy, appointed from civilian life by the President, by and with the advice and consent of the Senate. A person may not be appointed as Under Secretary within 10 years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b)(1) The Under Secretary shall perform such duties and exercise such powers as the Secretary of Defense may prescribe.

(2) The Under Secretary shall assist the Secretary of Defense—

(A) in preparing written policy guidance for the preparation and review of contingency plans; and

(B) in reviewing such plans.

(3) Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary shall have responsibility for supervising and directing activities of the Department of Defense relating to export controls.

(c) The Under Secretary takes precedence in the Department of Defense after the Secretary of Defense, the Deputy Secretary of Defense, the Under Secretary of Defense for Acquisition, Tech-

nology, and Logistics, and the Secretaries of the military departments.

(Formerly part of § 135, which was as designated in part as § 134 and amended identically by P.L. 99–433, § 105(1), Oct. 1, 1986, 100 Stat. 997; amended P.L. 99–500, 99–591, 99–661, § 101(c) [§ 903(a)], § 101(c) [§ 903(a)], § 903(a), Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–132, 3341–132, 3911 [former § 134 transferred to § 132]; P.L. 103–160, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; P.L. 105–261, § 1521(a), Oct. 17, 1998, 112 Stat. 2178; P.L. 106–65, § 911(d)(1), Oct. 5, 1999, 113 Stat. 719.)

§ 134a. Deputy Under Secretary of Defense for Policy

(a) There is a Deputy Under Secretary of Defense for Policy, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The Deputy Under Secretary of Defense for Policy shall assist the Under Secretary of Defense for Policy in the performance of his duties. The Deputy Under Secretary of Defense for Policy shall act for, and exercise the powers of, the Under Secretary when the Under Secretary is absent or disabled.

(Added P.L. 102–190, § 901(a), Dec. 5, 1991, 105 Stat. 1450.)

§ 134b. Deputy Under Secretary of Defense for Technology Security Policy

(a) There is in the Office of the Under Secretary of Defense for Policy a Deputy Under Secretary of Defense for Technology Security Policy.

(b) The Deputy Under Secretary serves as the Director of the Defense Technology Security Administration (or any successor organization charged with similar responsibilities).

(c) The principal duties of the Deputy Under Secretary are—

(1) assisting the Under Secretary of Defense for Policy in supervising and directing the activities of the Department of Defense relating to export controls; and

(2) assisting the Under Secretary of Defense for Policy in developing policies and positions regarding the appropriate export control policies and procedures that are necessary to protect the national security interests of the United States.

(d) The Deputy Under Secretary shall perform such additional duties and exercise such authority as the Secretary of Defense may prescribe.

(Added P.L. 105–261, § 1521(b)(1), Oct. 17, 1998, 112 Stat. 2178; amended P.L. 106–65, § 911(d)(1), Oct. 5, 1999, 113 Stat. 719.)

§ 135. Under Secretary of Defense (Comptroller)

(a) There is an Under Secretary of Defense (Comptroller), appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b)[1] The Under Secretary of Defense (Comptroller) is the agency Chief Financial Officer of the Department of Defense for the purposes of chapter 9 of title 31. The Under Secretary of Defense (Comptroller) shall perform such additional duties and exercise such powers as the Secretary of Defense may prescribe.

[1] On Jan. 8, 1991, the President designated the Comptroller of the Department of Defense [now the Under Secretary of Defense (Comptroller)] to be the Chief Financial Officer of the Department of Defense, pursuant to the provisions of the Chief Financial Officers Act of 1990 (P.L. 101–576).

(c) The Under Secretary of Defense (Comptroller) shall advise and assist the Secretary of Defense—

(1) in performing such budgetary and fiscal functions and duties, and in exercising such budgetary and fiscal powers, as are needed to carry out the powers of the Secretary;

(2) in supervising and directing the preparation of budget estimates of the Department of Defense;

(3) in establishing and supervising the execution of principles, policies, and procedures to be followed in connection with organizational and administrative matters relating to—

(A) the preparation and execution of budgets;

(B) fiscal, cost, operating, and capital property accounting; and

(C) progress and statistical reporting;

(4) in establishing and supervising the execution of policies and procedures relating to the expenditure and collection of funds administered by the Department of Defense; and

(5) in establishing uniform terminologies, classifications, and procedures concerning matters covered by clauses (1) through (4).

(d) The Under Secretary of Defense (Comptroller) takes precedence in the Department of Defense after the Under Secretary of Defense for Policy.

(e)(1) The Under Secretary of Defense (Comptroller) shall ensure that each congressional committee specified in paragraph (2) is informed, in a timely manner, regarding all matters relating to the budgetary, fiscal, and analytic activities of the Department of Defense that are under the supervision of the Under Secretary of Defense (Comptroller).

(2) 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.

(Added as § 137 by P.L. 99–433, § 107, Oct. 1, 1986, 100 Stat. 998 [former § 137 transferred to § 139]; redesignated § 135, transferred, and amended P.L. 103–160, §§ 901(a)(2), 902(a)(1), (b), Nov. 30, 1993, 107 Stat. 1726, 1727 [former § 135 redesignated § 137]; amended P.L. 103–337, § 903(a)(1), (2), Oct. 5, 1994, 108 Stat. 2823; P.L. 104–106, § 1502(a)(6), Feb. 10, 1996, 110 Stat. 502; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 136. Under Secretary of Defense for Personnel and Readiness

(a) There is an Under Secretary of Defense for Personnel and Readiness, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary of Defense for Personnel and Readiness shall perform such duties and exercise such powers as the Secretary of Defense may prescribe in the areas of military readiness, total force management, military and civilian personnel requirements, military and civilian personnel training, military and civilian family matters, exchange, commissary, and nonappropriated fund activities, personnel requirements for weapons support, National Guard and reserve components, and health affairs.

(c) The Under Secretary of Defense for Personnel and Readiness takes precedence in the Department of Defense after the Under Secretary of Defense (Comptroller).

(d) The Under Secretary of Defense for Personnel and Readiness is responsible, subject to the authority, direction, and control of the Secretary of Defense, for the monitoring of the operations tempo and personnel tempo of the armed forces. The Under Secretary shall establish, to the extent practicable, uniform standards within the Department of Defense for terminology and policies relating to deployment of units and personnel away from their assigned duty stations (including the length of time units or personnel may be away for such a deployment) and shall establish uniform reporting systems for tracking deployments.

(Added P.L. 103–160, § 903(a), Nov. 30, 1993, 107 Stat. 1727 [former § 136 redesignated § 138]; amended P.L. 104–106, § 1503(a)(2), Feb. 10, 1996, 110 Stat. 510; P.L. 106–65, §§ 923(a), 1066(a)(1), Oct. 5, 1999, 113 Stat. 724, 770.)

[§ 136a. Transferred to § 138 (now § 139)]

§ 137. Director of Defense Research and Engineering

(a) There is a Director of Defense Research and Engineering, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) Except as otherwise prescribed by the Secretary of Defense, the Director of Defense Research and Engineering shall perform such duties relating to research and engineering as the Under Secretary of Defense for Acquisition, Technology, and Logistics may prescribe.

(Added as § 135 by P.L. 87–651, § 202, Sept. 7, 1962, 76 Stat. 518; amended P.L. 92–596, § 4(2), Oct. 27, 1972, 86 Stat. 1318; P.L. 95–140, § 2(a), Oct. 21, 1977, 91 Stat. 1172; P.L. 99–348, § 501 (b), (e), July 1, 1986, 100 Stat. 707, 708; P.L. 99–433, § 105(2), Oct. 1, 1986, 100 Stat. 997; amended identically P.L. 99–500, 99–591, 99–661, § 101(c) [§ 903(a)], § 101(c) [§ 903(a)], § 903(a), Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–132, 3341–132, 3911; redesignated § 137 and amended P.L. 103–160, §§ 901(a)(1), 904(d)(1), Nov. 30, 1993, 107 Stat. 1726, 1728 [former § 137 transferred to § 135]; P.L. 106–65, § 911(d)(1), Oct. 5, 1999, 113 Stat. 719.)

§ 138. Assistant Secretaries of Defense

(a) There are nine Assistant Secretaries of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b)(1) The Assistant Secretaries shall perform such duties and exercise such powers as the Secretary of Defense may prescribe.

(2) One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Reserve Affairs. He shall have as his principal duty the overall supervision of reserve component affairs of the Department of Defense.

[(3) Repealed by § 902 of P.L. 105–261 (115 Stat. 2091.)]

(4) One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict. He shall have as his principal duty the overall supervision (including oversight of policy and resources) of special operations activities (as defined in section 167(j) of this title) and low intensity conflict activities of the Department of Defense. The Assistant Secretary is the principal civilian adviser to the Secretary of Defense on special operations and low intensity conflict matters and (after

the Secretary and Deputy Secretary) is the principal special operations and low intensity conflict official within the senior management of the Department of Defense.

(5) One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Legislative Affairs. He shall have as his principal duty the overall supervision of legislative affairs of the Department of Defense.

(6)(A) One of the Assistant Secretaries, as designated by the Secretary of Defense from among those Assistant Secretaries with responsibilities that include responsibilities related to combating terrorism, shall have, among that Assistant Secretary's duties, the duty to provide overall direction and supervision for policy, program planning and execution, and allocation and use of resources for the activities of the Department of Defense for combating terrorism, including antiterrorism activities, counterterrorism activities, terrorism consequences management activities, and terrorism-related intelligence support activities.

(B) The Assistant Secretary designated under subparagraph (A) shall be the principal civilian adviser to the Secretary of Defense on combating terrorism and (after the Secretary and Deputy Secretary) shall be the principal official within the senior management of the Department of Defense responsible for combating terrorism.

(C) If the Secretary of Defense designates under subparagraph (A) an Assistant Secretary other than the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, then the responsibilities of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict related to combating terrorism shall be exercised subject to subparagraph (B).

(c) Except as otherwise specifically provided by law, an Assistant Secretary may not issue an order to a military department unless—

(1) the Secretary of Defense has specifically delegated that authority to the Assistant Secretary in writing; and

(2) the order is issued through the Secretary of the military department concerned.

(d) The Assistant Secretaries take precedence in the Department of Defense after the Secretary of Defense, the Deputy Secretary of Defense, the Secretaries of the military departments, the Under Secretaries of Defense, and the Director of Defense Research and Engineering. The Assistant Secretaries take precedence among themselves in the order prescribed by the Secretary of Defense.

(Added as § 136 by P.L. 87–651, § 202, Sept. 7, 1962, 76 Stat. 518; amended P.L. 90–168, § 2(1), (2), Dec. 1, 1967, 81 Stat. 521; P.L. 91–121, § 404(a), Nov. 19, 1969, 83 Stat. 207; P.L. 92–215, § 1, Dec. 22, 1971, 85 Stat. 777; P.L. 92–596, § 4(2), Oct. 27, 1972, 86 Stat. 1318; P.L. 95–140, § 3(a), Oct. 21, 1977, 91 Stat. 1173; P.L. 96–107, § 820(a), Nov. 9, 1979, 93 Stat. 819; P.L. 98–94, § 1212(a), Sept. 24, 1983, 97 Stat. 686; P.L. 99–433, §§ 106, 110(d)(9), Oct. 1, 1986, 100 Stat. 997, 1003; amended identically P.L. 99–500, 99–591, 99–661, § 101(c) [§ 9115(a)], § 101(c) [§ 9115(a)], § 1311(a), Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–122, 3341–122, 3983; P.L. 100–180, § 1211(a)(1), Dec. 4, 1987, 101 Stat. 1154; P.L. 100–453, § 702, Sept. 29, 1988, 102 Stat. 1912; P.L. 100–456, § 701, Sept. 29, 1988, 102 Stat. 1992; redesignated § 138 and amended P.L. 103–160, §§ 901(a)(1), (c), 903(c)(1), 905, Nov. 30, 1993, 107 Stat. 1726, 1727, 1729 [former § 138 redesignated § 139]; P.L. 103–337, §§ 901(a), 903(b)(2), Oct. 5, 1994, 108 Stat. 2822, 2823; P.L. 104–106, § 902(a), Feb. 10, 1996, 110 Stat. 401; P.L. 105–261, §§ 901(a), 902, Oct. 17, 1998, 112 Stat. 2091; P.L. 106–398, § 1[901], Oct. 30, 2000, 114 Stat. 1654, 1654A–223.)

§ 139. Director of Operational Test and Evaluation

(a)(1) There is a Director of Operational Test and Evaluation in the Department of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate. The Director shall be appointed without regard to political affiliation and solely on the basis of fitness to perform the duties of the office of Director. The Director may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

(2) In this section:

(A) The term "operational test and evaluation" means—

(i) the field test, under realistic combat conditions, of any item of (or key component of) weapons, equipment, or munitions for the purpose of determining the effectiveness and suitability of the weapons, equipment, or munitions for use in combat by typical military users; and

(ii) the evaluation of the results of such test.

(B) 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 or that is designated as such a program by the Director for purposes of this section.

(b) The Director is the principal adviser to the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology, and Logistics on operational test and evaluation in the Department of Defense and the principal operational test and evaluation official within the senior management of the Department of Defense. The Director shall—

(1) prescribe, by authority of the Secretary of Defense, policies and procedures for the conduct of operational test and evaluation in the Department of Defense;

(2) provide guidance to and consult with the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Secretaries of the military departments with respect to operational test and evaluation in the Department of Defense in general and with respect to specific operational test and evaluation to be conducted in connection with a major defense acquisition program;

(3) monitor and review all operational test and evaluation in the Department of Defense;

(4) coordinate operational testing conducted jointly by more than one military department or defense agency;

(5) review and make recommendations to the Secretary of Defense on all budgetary and financial matters relating to operational test and evaluation, including operational test facilities and equipment, in the Department of Defense; and

(6) monitor and review the live fire testing activities of the Department of Defense provided for under section 2366 of this title.

(c) The Director may communicate views on matters within the responsibility of the Director directly to the Secretary of Defense and the Deputy Secretary of Defense without obtaining the approval or concurrence of any other official within the Department of Defense. The Director shall consult closely with, but the Director and the Director's staff are independent of, the Under Secretary of Defense for Acquisition and Technology and all other officers and entities of the Department of Defense responsible for acquisition.

(d) The Director may not be assigned any responsibility for developmental test and evaluation, other than the provision of advice to officials responsible for such testing.

(e)(1) The Secretary of a military department shall report promptly to the Director the results of all operational test and evaluation conducted by the military department and of all studies conducted by the military department in connection with operational test and evaluation in the military department.

(2) The Director may require that such observers as he designates be present during the preparation for and the conduct of the test part of any operational test and evaluation conducted in the Department of Defense.

(3) The Director shall have access to all records and data in the Department of Defense (including the records and data of each military department) that the Director considers necessary to review in order to carry out his duties under this section.

(f) The Director shall prepare an annual report summarizing the operational test and evaluation activities (including live fire testing activities) of the Department of Defense during the preceding fiscal year. Each such report shall be submitted concurrently to the Secretary of Defense, the Under Secretary of Defense for Acquisition and Technology, and the Congress not later than 10 days after the transmission of the budget for the next fiscal year under section 1105 of title 31. If the Director submits the report to Congress in a classified form, the Director shall concurrently submit an unclassified version of the report to Congress. The report shall include such comments and recommendations as the Director considers appropriate, including comments and recommendations on resources and facilities available for operational test and evaluation and levels of funding made available for operational test and evaluation activities. The Secretary may comment on any report of the Director to Congress under this subsection.

(g) The Director shall comply with requests from Congress (or any committee of either House of Congress) for information relating to operational test and evaluation in the Department of Defense.

(h) The President shall include in the Budget transmitted to Congress pursuant to section 1105 of title 31 for each fiscal year a separate statement of estimated expenditures and proposed appropriations for that fiscal year for the activities of the Director of Operational Test and Evaluation in carrying out the duties and responsibilities of the Director under this section.

(i) The Director shall have sufficient professional staff of military and civilian personnel to enable the Director to carry out the duties and responsibilities of the Director prescribed by law.

(Added as § 136a by P.L. 98–94, § 1211(a)(1), Sept. 24, 1983, 97 Stat. 684; amended P.L. 99–348, § 501(c), July 1, 1986, 100 Stat. 708; redesignated § 138 and amended P.L. 99–433, §§ 101(a)(7), 110(d)(10), (g)(1), Oct. 1, 1986, 100 Stat. 995, 1003, 1004; [former § 138 transferred to §§ 114–116]; amended identically P.L. 99–500, 99–591, 99–661, § 101(c) [§§ 903(c), 910(c)], § 101(c) [§§ 903(c), 910(c)], §§ 903(c), 910(c), Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–132, 1783–145, 3341–132, 3341–145, 3912, 3924; amended P.L. 100–26, § 7(a)(1), (c)(2), April 21, 1987, 101 Stat. 275, 280; P.L. 100–180, § 801, Dec. 4, 1987, 101 Stat. 1123; P.L. 101–189, §§ 802(b), 1622(e)(1), 103 Stat 1486, 1605; P.L. 101–510, § 1484(k)(1), Nov. 5, 1990, 104 Stat. 1719; redesignated § 139 and amended P.L. 103–160, §§ 901(a)(1), 904(d)(1), 907, Nov. 30, 1993, 107 Stat. 1726, 1728, 1730 [former § 139 redesignated § 140]; P.L. 103–355, §§ 3011, 3012, 3013, Oct. 13, 1994, 108 Stat. 3331, 3332; P.L. 106–65, § 911(d)(1), Oct. 5, 1999, 113 Stat. 719.)

[§§ 139a, 139b, and 139c. Transferred to §§ 2432, 2433, and 2434]

§ 140. General Counsel

(a) There is a General Counsel of the Department of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The General Counsel is the chief legal officer of the Department of Defense. He shall perform such functions as the Secretary of Defense may prescribe.

(Added as § 137 by P.L. 87–651, § 202, Sept. 7, 1962, 76 Stat. 519; amended P.L. 88–426, § 305(9), Aug. 14, 1964, 78 Stat. 423; redesignated § 139 and amended P.L. 99–433, § 101(a)(7), 110(d)(11), Oct. 1, 1986, 100 Stat. 995, 1003 [former § 139 transferred to § 2431]; redesignated § 140 and amended P.L. 103–160, § 901(a)(1), Nov. 30, 1993, 107 Stat. 1726 [former § 140 redesignated § 141].)

[§ 140a. Transferred to § 128, then to § 421]

[§ 140b. Transferred to § 129]

[§ 140c. Transferred to § 130]

§ 141. Inspector General

(a) There is an Inspector General of the Department of Defense, who is appointed as provided in section 3 of the Inspector General Act of 1978 (Public Law 95–452; 5 U.S.C. App. 3).

(b) The Inspector General performs the duties, has the responsibilities, and exercises the powers specified in the Inspector General Act of 1978.

(Added as § 140 by P.L. 99–433, § 108, Oct. 1, 1986, 100 Stat. 998 [former § 140 transferred to § 127]; redesignated § 141 P.L. 103–160, § 901(a)(1), Nov. 30, 1993, 107 Stat. 1726 [former § 141 redesignated § 142].)

§ 142. Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs

(a) There is an Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs, appointed by the President, by and with the advice and consent of the Senate.

(b) The Assistant to the Secretary shall—

(1) advise the Secretary of Defense on nuclear energy, nuclear weapons, and chemical and biological defense;

(2) serve as the Staff Director of the Nuclear Weapons Council established by section 179 of this title; and

(3) perform such additional duties as the Secretary may prescribe.

(Added as § 141 by P.L. 100–180, § 1245(a)(1), Dec. 4, 1987, 101 Stat. 1165; redesignated § 142 P.L. 103–160, § 901(a)(1), Nov. 30, 1993, 107 Stat. 1726; amended P.L. 104–106, § 904(a)(1), Feb. 10, 1996, 110 Stat. 403.)

§ 143. Office of the Secretary of Defense personnel: limitation

(a) PERMANENT LIMITATION ON OSD PERSONNEL.—The number of OSD personnel may not exceed 3,767.

(b) OSD PERSONNEL DEFINED.—For purposes of this section, the term "OSD personnel" means military and civilian personnel of the Department of Defense who are assigned to, or employed in, functions in the Office of the Secretary of Defense (including Direct Support Activities of that Office and the Washington Headquarters Services of the Department of Defense).

(c) LIMITATION ON REASSIGNMENT OF FUNCTIONS.—In carrying out reductions in the number of personnel assigned to, or employed in, the Office of the Secretary of Defense in order to comply with this section, the Secretary of Defense may not reassign functions solely in order to evade the requirements contained in this section.

(Added P.L. 105–85, § 911(d)(1), Nov. 18, 1997, 111 Stat. 1859; amended P.L. 106–65, § 921(c), Oct. 5, 1999, 113 Stat. 723.)

CHAPTER 5—JOINT CHIEFS OF STAFF

Sec.
151. Joint Chiefs of Staff: composition; functions.
152. Chairman: appointment; grade and rank.
153. Chairman: functions.
154. Vice Chairman.
155. Joint Staff.

§ 151. Joint Chiefs of Staff: composition; functions

(a) COMPOSITION.—There are in the Department of Defense the Joint Chiefs of Staff, headed by the Chairman of the Joint Chiefs of Staff. The Joint Chiefs of Staff consist of the following:

(1) The Chairman.
(2) The Vice Chairman.
(3) The Chief of Staff of the Army.
(4) The Chief of Naval Operations.
(5) The Chief of Staff of the Air Force.
(6) The Commandant of the Marine Corps.

(b) FUNCTION AS MILITARY ADVISERS.—(1) The Chairman of the Joint Chiefs of Staff is the principal military adviser to the President, the National Security Council, and the Secretary of Defense.

(2) The other members of the Joint Chiefs of Staff are military advisers to the President, the National Security Council, and the Secretary of Defense as specified in subsections (d) and (e).

(c) CONSULTATION BY CHAIRMAN.—(1) In carrying out his functions, duties, and responsibilities, the Chairman shall, as he considers appropriate, consult with and seek the advice of—

(A) the other members of the Joint Chiefs of Staff; and
(B) the commanders of the unified and specified combatant commands.

(2) Subject to subsection (d), in presenting advice with respect to any matter to the President, the National Security Council, or the Secretary of Defense, the Chairman shall, as he considers appropriate, inform the President, the National Security Council, or the Secretary of Defense, as the case may be, of the range of military advice and opinion with respect to that matter.

(d) ADVICE AND OPINIONS OF MEMBERS OTHER THAN CHAIRMAN.—(1) A member of the Joint Chiefs of Staff (other than the Chairman) may submit to the Chairman advice or an opinion in disagreement with, or advice or an opinion in addition to, the advice presented by the Chairman to the President, the National Security Council, or the Secretary of Defense. If a member submits such advice or opinion, the Chairman shall present the advice or opinion of such member at the same time he presents his own advice to the President, the National Security Council, or the Secretary of Defense, as the case may be.

(2) The Chairman shall establish procedures to ensure that the presentation of his own advice to the President, the National Secu-

rity Council, or the Secretary of Defense is not unduly delayed by reason of the submission of the individual advice or opinion of another member of the Joint Chiefs of Staff.

(e) ADVICE ON REQUEST.—The members of the Joint Chiefs of Staff, individually or collectively, in their capacity as military advisers, shall provide advice to the President, the National Security Council, or the Secretary of Defense on a particular matter when the President, the National Security Council, or the Secretary requests such advice.

(f) RECOMMENDATIONS TO CONGRESS.—After first informing the Secretary of Defense, a member of the Joint Chiefs of Staff may make such recommendations to Congress relating to the Department of Defense as he considers appropriate.

(g) MEETINGS OF JCS.—(1) The Chairman shall convene regular meetings of the Joint Chiefs of Staff.

(2) Subject to the authority, direction, and control of the President and the Secretary of Defense, the Chairman shall—

(A) preside over the Joint Chiefs of Staff;

(B) provide agenda for the meetings of the Joint Chiefs of Staff (including, as the Chairman considers appropriate, any subject for the agenda recommended by any other member of the Joint Chiefs of Staff);

(C) assist the Joint Chiefs of Staff in carrying on their business as promptly as practicable; and

(D) determine when issues under consideration by the Joint Chiefs of Staff shall be decided.

(Aug. 10, 1956, § 141, ch. 1041, 70A Stat. 6,; Aug. 6, 1958, P.L. 85–599, § 7, 72 Stat. 519; Sept. 7, 1962, P.L. 87–651, § 204, 76 Stat. 519; Oct. 20, 1978, P.L. 95–485, § 807, 92 Stat. 1622; redesignated § 151 and revised in its entirety, P.L. 99–433, § 201, Oct. 1, 1986, 100 Stat. 1005; amended P.L. 102–484, § 911(a), Oct. 23, 1992, 106 Stat. 2473.)

§ 152. Chairman: appointment; grade and rank

(a) APPOINTMENT; TERM OF OFFICE.—(1) There is a Chairman of the Joint Chiefs of Staff, appointed by the President, by and with the advice and consent of the Senate, from the officers of the regular components of the armed forces. The Chairman serves at the pleasure of the President for a term of two years, beginning on October 1 of odd-numbered years. Subject to paragraph (3), an officer serving as Chairman may be reappointed in the same manner for two additional terms. However, in time of war there is no limit on the number of reappointments.

(2) In the event of the death, retirement, resignation, or reassignment of the officer serving as Chairman before the end of the term for which the officer was appointed, an officer appointed to fill the vacancy shall serve as Chairman only for the remainder of the original term, but may be reappointed as provided in paragraph (1).

(3) An officer may not serve as Chairman or Vice Chairman of the Joint Chiefs of Staff if the combined period of service of such officer in such positions exceeds six years. However, the President may extend to eight years the combined period of service an officer may serve in such positions if he determines such action is in the national interest. The limitations of this paragraph do not apply in time of war.

(b) REQUIREMENT FOR APPOINTMENT.—(1) The President may appoint an officer as Chairman of the Joint Chiefs of Staff only if the officer has served as—

(A) the Vice Chairman of the Joint Chiefs of Staff;

(B) the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, or the Commandant of the Marine Corps; or

(C) the commander of a unified or specified combatant command.

(2) The President may waive paragraph (1) in the case of an officer if the President determines such action is necessary in the national interest.

(c) GRADE AND RANK.—The Chairman, while so serving, holds the grade of general or, in the case of an officer of the Navy, admiral and outranks all other officers of the armed forces. However, he may not exercise military command over the Joint Chiefs of Staff or any of the armed forces.

(Aug. 10, 1956, § 142, ch. 1041, 70A Stat. 7,; Sept. 7, 1962, P.L. 87–649, § 14c(1), 76 Stat. 501; P.L. 98–525, § 1301(b), Oct. 19, 1984, 98 Stat. 2611; redesignated § 152 and revised in its entirety, P.L. 99–433, § 201, Oct. 1, 1986, 100 Stat. 1006; amended P.L. 100–180, § 1314(b)(1)(A), Dec. 4, 1987, 101 Stat. 1175.)

§ 153. Chairman: functions

(a) PLANNING; ADVICE; POLICY FORMULATION.—Subject to the authority, direction, and control of the President and the Secretary of Defense, the Chairman of the Joint Chiefs of Staff shall be responsible for the following:

(1) STRATEGIC DIRECTION.—Assisting the President and the Secretary of Defense in providing for the strategic direction of the armed forces.

(2) STRATEGIC PLANNING.—(A) Preparing strategic plans, including plans which conform with resource levels projected by the Secretary of Defense to be available for the period of time for which the plans are to be effective.

(B) Preparing joint logistic and mobility plans to support those strategic plans and recommending the assignment of logistic and mobility responsibilities to the armed forces in accordance with those logistic and mobility plans.

(C) Performing net assessments to determine the capabilities of the armed forces of the United States and its allies as compared with those of their potential adversaries.

(3) CONTINGENCY PLANNING; PREPAREDNESS.—(A) Providing for the preparation and review of contingency plans which conform to policy guidance from the President and the Secretary of Defense.

(B) Preparing joint logistic and mobility plans to support those contingency plans and recommending the assignment of logistic and mobility responsibilities to the armed forces in accordance with those logistic and mobility plans.

(C) Advising the Secretary on critical deficiencies and strengths in force capabilities (including manpower, logistic, and mobility support) identified during the preparation and review of contingency plans and assessing the effect of such deficiencies and strengths on meeting national security objectives and policy and on strategic plans.

(D) Establishing and maintaining, after consultation with the commanders of the unified and specified combatant commands, a uniform system of evaluating the preparedness of each such command to carry out missions assigned to the command.

(4) ADVICE ON REQUIREMENTS, PROGRAMS, AND BUDGET.—(A) Advising the Secretary, under section 163(b)(2) of this title, on the priorities of the requirements identified by the commanders of the unified and specified combatant commands.

(B) Advising the Secretary on the extent to which the program recommendations and budget proposals of the military departments and other components of the Department of Defense for a fiscal year conform with the priorities established in strategic plans and with the priorities established for the requirements of the unified and specified combatant commands.

(C) Submitting to the Secretary alternative program recommendations and budget proposals, within projected resource levels and guidance provided by the Secretary, in order to achieve greater conformance with the priorities referred to in clause (B).

(D) Recommending to the Secretary, in accordance with section 166 of this title, a budget proposal for activities of each unified and specified combatant command.

(E) Advising the Secretary on the extent to which the major programs and policies of the armed forces in the area of manpower conform with strategic plans.

(F) Assessing military requirements for defense acquisition programs.

(5) DOCTRINE, TRAINING, AND EDUCATION.—(A) Developing doctrine for the joint employment of the armed forces.

(B) Formulating policies for the joint training of the armed forces.

(C) Formulating policies for coordinating the military education and training of members of the armed forces.

(6) OTHER MATTERS.—(A) Providing for representation of the United States on the Military Staff Committee of the United Nations in accordance with the Charter of the United Nations.

(B) Performing such other duties as may be prescribed by law or by the President or the Secretary of Defense.

(b) REPORT ON ASSIGNMENT OF ROLES AND MISSIONS.—(1) Not less than once every three years, or upon the request of the President or the Secretary of Defense, the Chairman shall submit to the Secretary of Defense a report containing such recommendations for changes in the assignment of functions (or roles and missions) to the armed forces as the Chairman considers necessary to achieve maximum effectiveness of the armed forces. In preparing each such report, the Chairman shall consider (among other matters) the following:

(A) Changes in the nature of the threats faced by the United States.

(B) Unnecessary duplication of effort among the armed forces.

(C) Changes in technology that can be applied effectively to warfare.

(2) The Chairman shall include in each such report recommendations for such changes in policies, directives, regulations, and legislation as may be necessary to achieve the changes in the assignment of functions recommended by the Chairman.

(c) RISKS UNDER NATIONAL MILITARY STRATEGY.—(1) Not later than January 1 each year, the Chairman shall submit to the Secretary of Defense a report providing the Chairman's assessment of the nature and magnitude of the strategic and military risks associated with executing the missions called for under the current National Military Strategy.

(2) The Secretary shall forward the report received under paragraph (1) in any year, with the Secretary's comments thereon (if any), to Congress with the Secretary's next transmission to Congress of the annual Department of Defense budget justification materials in support of the Department of Defense component of the budget of the President submitted under section 1105 of title 31 for the next fiscal year. If the Chairman's assessment in such report in any year is that risk associated with executing the missions called for under the National Military Strategy is significant, the Secretary shall include with the report as submitted to Congress the Secretary's plan for mitigating that risk.

(d) ANNUAL REPORT ON COMBATANT COMMAND REQUIREMENTS.—(1) At or about the time that the budget is submitted to Congress for a fiscal year under section 1105(a) of title 31, the Chairman shall submit to the committees of Congress named in paragraph (2) a report on the requirements of the combatant commands established under section 161 of this title. The report shall contain the following:

(A) A consolidation of the integrated priority lists of requirements of the combatant commands.

(B) The Chairman's views on the consolidated lists.

(C) A description of the extent to which the most recent future-years defense program (under section 221 of this title) addresses the requirements on the consolidated lists.

(D) A description of the funding proposed in the President's budget for the next fiscal year, and for the subsequent fiscal years covered by the most recent future-years defense program, to address each deficiency in readiness identified during the joint readiness review conducted under section 117 of this title for the first quarter of the current fiscal year.

(2) The committees of Congress referred to in paragraph (1) are the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives.

(Added P.L. 99–433, § 201, Oct. 1, 1986, 100 Stat. 1007; amended P.L. 106–65, § 1033, Oct. 5, 1999, 113 Stat. 751; P.L. 106–398, § 1[905], Oct. 30, 2000, 114 Stat. 1654, 1654A–226.)

§ 154. Vice Chairman

(a) APPOINTMENT.—(1) There is a Vice Chairman of the Joint Chiefs of Staff, appointed by the President, by and with the advice and consent of the Senate, from the officers of the regular components of the armed forces.

(2) The Chairman and Vice Chairman may not be members of the same armed force. However, the President may waive the restriction in the preceding sentence for a limited period of time in order to provide for the orderly transition of officers appointed to serve in the positions of Chairman and Vice Chairman.

(3) The Vice Chairman serves at the pleasure of the President for a term of two years and may be reappointed in the same manner for two additional terms. However, in time of war there is no limit on the number of reappointments.

(b) REQUIREMENT FOR APPOINTMENT.—(1) The President may appoint an officer as Vice Chairman of the Joint Chiefs of Staff only if the officer—

(A) has the joint specialty under section 661 of this title; and

(B) has completed a full tour of duty in a joint duty assignment (as defined in section 664(f) of this title) as a general or flag officer.

(2) The President may waive paragraph (1) in the case of an officer if the President determines such action is necessary in the national interest.

(c) DUTIES.—The Vice Chairman performs the duties prescribed for him as a member of the Joint Chiefs of Staff and such other duties as may be prescribed by the Chairman with the approval of the Secretary of Defense.

(d) FUNCTION AS ACTING CHAIRMAN.—When there is a vacancy in the office of Chairman or in the absence or disability of the Chairman, the Vice Chairman acts as Chairman and performs the duties of the Chairman until a successor is appointed or the absence or disability ceases.

(e) SUCCESSION AFTER CHAIRMAN AND VICE CHAIRMAN.—When there is a vacancy in the offices of both Chairman and Vice Chairman or in the absence or disability of both the Chairman and the Vice Chairman, or when there is a vacancy in one such office and in the absence or disability of the officer holding the other, the President shall designate a member of the Joint Chiefs of Staff to act as and perform the duties of the Chairman until a successor to the Chairman or Vice Chairman is appointed or the absence or disability of the Chairman or Vice Chairman ceases.

(f) GRADE AND RANK.—The Vice Chairman, while so serving, holds the grade of general or, in the case of an officer of the Navy, admiral and outranks all other officers of the armed forces except the Chairman. The Vice Chairman may not exercise military command over the Joint Chiefs of Staff or any of the armed forces.

(Added P.L. 99–433, § 201, Oct. 1, 1986, 100 Stat. 1008; amended P.L. 100–456, § 519(a)(1), Sept. 29, 1988, 102 Stat. 1972; P.L. 102–484, § 911(b)(1), Oct. 23, 1992, 106 Stat. 2473.)

§ 155. Joint Staff [1]

(a) APPOINTMENT OF OFFICERS TO JOINT STAFF.—(1) There is a Joint Staff under the Chairman of the Joint Chiefs of Staff. The

[1] Section 901 of the National Defense Authorization Act for Fiscal Year 1998 (P.L. 105–85; 111 Stat. 1853) provides:

Joint Staff assists the Chairman and, subject to the authority, direction, and control of the Chairman, the other members of the Joint Chiefs of Staff in carrying out their responsibilities.

(2) Officers of the armed forces (other than the Coast Guard) assigned to serve on the Joint Staff shall be selected by the Chairman in approximately equal numbers from—

(A) the Army;

(B) the Navy and the Marine Corps; and

(C) the Air Force.

(3) Selection of officers of an armed force to serve on the Joint Staff shall be made by the Chairman from a list of officers submitted by the Secretary of the military department having jurisdiction over that armed force. Each officer whose name is submitted shall be among those officers considered to be the most outstanding officers of that armed force. The Chairman may specify the number of officers to be included on any such list.

(b) DIRECTOR.—The Chairman of the Joint Chiefs of Staff, after consultation with the other members of the Joint Chiefs of Staff and with the approval of the Secretary of Defense, may select an officer to serve as Director of the Joint Staff.

(c) MANAGEMENT OF JOINT STAFF.—The Chairman of the Joint Chiefs of Staff manages the Joint Staff and the Director of the Joint Staff. The Joint Staff shall perform such duties as the Chair-

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SEC. 901. ASSISTANTS TO THE CHAIRMAN OF THE JOINT CHIEFS OF STAFF FOR NATIONAL GUARD MATTERS AND FOR RESERVE MATTERS.

(a) ESTABLISHMENT OF POSITIONS.—The Secretary of Defense shall establish the following positions within the Joint Staff:

(1) Assistant to the Chairman of the Joint Chiefs of Staff for National Guard Matters.

(2) Assistant to the Chairman of the Joint Chiefs of Staff for Reserve Matters.

(b) SELECTION.—(1) The Assistant to the Chairman of the Joint Chiefs of Staff for National Guard Matters shall be selected by the Chairman from officers of the Army National Guard of the United States or the Air Guard of the United States who—

(A) are recommended for such selection by their respective Governors or, in the case of the District of Columbia, the commanding general of the District of Columbia National Guard;

(B) have had at least 10 years of federally recognized commissioned service in the National Guard; and

(C) are in a grade above the grade of colonel.

(2) The Assistant to the Chairman of the Joint Chiefs of Staff for Reserve Matters shall be selected by the Chairman from officers of the Army Reserve, the Naval Reserve, the Marine Corps Reserve, or the Air Force Reserve who—

(A) are recommended for such selection by the Secretary of the military department concerned;

(B) have had at least 10 years of commissioned service in their reserve component; and

(C) are in a grade above the grade of colonel or, in the case of the Naval Reserve, captain.

(c) TERM OF OFFICE.—Each Assistant to the Chairman under subsection (a) serves at the pleasure of the Chairman for a term of two years and may be continued in that assignment in the same manner for one additional term. However, in time of war there is no limit on the number of terms.

(d) GRADE.—Each Assistant to the Chairman, while so serving, holds the grade of major general or, in the case of the Naval Reserve, rear admiral. Each such officer shall be considered to be serving in a position external to that officer's Armed Force for purposes of section 721 of title 10, United States Code, as added by section 501(a).

(e) DUTIES.—The Assistant to the Chairman for National Guard Matters is an adviser to the Chairman on matters relating to the National Guard and performs the duties prescribed for that position by the Chairman. The Assistant to the Chairman for Reserve Matters is an adviser to the Chairman on matters relating to the reserves and performs the duties prescribed for that position by the Chairman.

(f) OTHER RESERVE COMPONENT REPRESENTATION ON JOINT STAFF.—(1) The Secretary of Defense, in consultation with the Chairman of the Joint Chiefs, shall develop appropriate policy guidance to ensure that, to the maximum extent practicable, the level of reserve component officer representation within the Joint Staff is commensurate with the significant role of the reserve components within the Total Force.

(2) [obsolete report requirement omitted]

(g) EFFECTIVE DATE.—[omitted]

man prescribes and shall perform such duties under such procedures as the Chairman prescribes.

(d) OPERATION OF JOINT STAFF.—The Secretary of Defense shall ensure that the Joint Staff is independently organized and operated so that the Joint Staff supports the Chairman of the Joint Chiefs of Staff in meeting the congressional purpose set forth in the last clause of section 2 of the National Security Act of 1947 (50 U.S.C. 401) to provide—

(1) for the unified strategic direction of the combatant forces;

(2) for their operation under unified command; and

(3) for their integration into an efficient team of land, naval, and air forces.

(e) PROHIBITION OF FUNCTION AS ARMED FORCES GENERAL STAFF.—The Joint Staff shall not operate or be organized as an overall Armed Forces General Staff and shall have no executive authority. The Joint Staff may be organized and may operate along conventional staff lines.

(f) TOUR OF DUTY OF JOINT STAFF OFFICERS.—(1) An officer who is assigned or detailed to permanent duty on the Joint Staff may not serve for a tour of duty of more than four years. However, such a tour of duty may be extended with the approval of the Secretary of Defense.

(2) In accordance with procedures established by the Secretary of Defense, the Chairman of the Joint Chiefs of Staff may suspend from duty and recommend the reassignment of any officer assigned to the Joint Staff. Upon receipt of such a recommendation, the Secretary concerned shall promptly reassign the officer.

(3) An officer completing a tour of duty with the Joint Staff may not be assigned or detailed to permanent duty on the Joint Staff within two years after relief from that duty except with the approval of the Secretary.

(4) Paragraphs (1) and (3) do not apply—

(A) in time of war; or

(B) during a national emergency declared by the President or Congress.

(g) COMPOSITION OF JOINT STAFF.—(1) The Joint Staff is composed of all members of the armed forces and civilian employees assigned or detailed to permanent duty in the executive part of the Department of Defense to perform the functions and duties prescribed under subsections (a) and (c).

(2) The Joint Staff does not include members of the armed forces or civilian employees assigned or detailed to permanent duty in a military department.

(Aug. 10, 1956, § 143, ch. 1041, 70A Stat. 7,; Aug. 6, 1958, P.L. 85–599, § 5(a), 72 Stat. 517; P.L. 98–525, § 1301(c), Oct. 19, 1984, 98 Stat. 2611; redesignated § 155 and revised in entirety, P.L. 99–433, § 201, Oct. 1, 1986, 100 Stat. 1009; amended P.L. 100–180, § 1314(b)(2), Dec. 4, 1987, 101 Stat. 1175; P.L. 101–510, § 902, Nov. 5, 1990, 104 Stat. 1620; P.L. 102–484, § 911(b)(2), 106 Stat. 2473.)

CHAPTER 6—COMBATANT COMMANDS

Sec.
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163. Role of Chairman of Joint Chiefs of Staff.
164. Commanders of combatant commands: assignment; powers and duties.
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168. Military-to-military contacts and comparable activities.

§ 161. Combatant commands: establishment

(a) UNIFIED AND SPECIFIED COMBATANT COMMANDS.—With the advice and assistance of the Chairman of the Joint Chiefs of Staff, the President, through the Secretary of Defense, shall—

(1) establish unified combatant commands and specified combatant commands to perform military missions; and

(2) prescribe the force structure of those commands.

(b) PERIODIC REVIEW.—(1) The Chairman periodically (and not less often than every two years) shall—

(A) review the missions, responsibilities (including geographic boundaries), and force structure of each combatant command; and

(B) recommend to the President, through the Secretary of Defense, any changes to such missions, responsibilities, and force structures as may be necessary.

(2) Except during time of hostilities or imminent threat of hostilities, the President shall notify Congress not more than 60 days after—

(A) establishing a new combatant command; or

(B) significantly revising the missions, responsibilities, or force structure of an existing combatant command.

(c) DEFINITIONS.—In this chapter:

(1) The term "unified combatant command" means a military command which has broad, continuing missions and which is composed of forces from two or more military departments.

(2) The term "specified combatant command" means a military command which has broad, continuing missions and which is normally composed of forces from a single military department.

(3) The term "combatant command" means a unified combatant command or a specified combatant command.

(Added P.L. 99–433, § 211(a), Oct. 1, 1986, 100 Stat. 1012.)

§ 162. Combatant commands: assigned forces; chain of command

(a) ASSIGNMENT OF FORCES.—(1) Except as provided in paragraph (2), the Secretaries of the military departments shall assign all forces under their jurisdiction to unified and specified combatant commands or to the United States element of the North American Aerospace Defense Command to perform missions assigned to those commands. Such assignments shall be made as directed by the Secretary of Defense, including direction as to the command to which forces are to be assigned. The Secretary of Defense shall ensure that such assignments are consistent with the force structure prescribed by the President for each combatant command.

(2) Except as otherwise directed by the Secretary of Defense, forces to be assigned by the Secretaries of the military departments to the combatant commands or to the United States element of the North American Aerospace Defense Command under paragraph (1) do not include forces assigned to carry out functions of the Secretary of a military department listed in sections 3013(b), 5013(b), and 8013(b) of this title or forces assigned to multinational peacekeeping organizations.

(3) A force assigned to a combatant command or to the United States element of the North American Aerospace Defense Command under this section may be transferred from the command to which it is assigned only—

(A) by authority of the Secretary of Defense; and

(B) under procedures prescribed by the Secretary and approved by the President.

(4) Except as otherwise directed by the Secretary of Defense, all forces operating within the geographic area assigned to a unified combatant command shall be assigned to, and under the command of, the commander of that command. The preceding sentence applies to forces assigned to a specified combatant command only as prescribed by the Secretary of Defense.

(b) CHAIN OF COMMAND.—Unless otherwise directed by the President, the chain of command to a unified or specified combatant command runs—

(1) from the President to the Secretary of Defense; and

(2) from the Secretary of Defense to the commander of the combatant command.

(Added P.L. 99–433, § 211(a), Oct. 1, 1986, 100 Stat. 1012; amended P.L. 100–180, § 1313, Dec. 4, 1987, 101 Stat. 1175; P.L. 100–456, § 711, Sept. 29, 1988, 102 Stat. 1997; P.L. 104–201, § 1073, Sept. 23, 1996, 110 Stat. 2657.)

§ 163. Role of Chairman of Joint Chiefs of Staff

(a) COMMUNICATIONS THROUGH CHAIRMAN OF JCS; ASSIGNMENT OF DUTIES.—Subject to the limitations in section 152(c) of this title, the President may—

(1) direct that communications between the President or the Secretary of Defense and the commanders of the unified and specified combatant commands be transmitted through the Chairman of the Joint Chiefs of Staff; and

(2) assign duties to the Chairman to assist the President and the Secretary of Defense in performing their command function.

(b) OVERSIGHT BY CHAIRMAN OF JOINT CHIEFS OF STAFF.—(1) The Secretary of Defense may assign to the Chairman of the Joint Chiefs of Staff responsibility for overseeing the activities of the combatant commands. Such assignment by the Secretary to the Chairman does not confer any command authority on the Chairman and does not alter the responsibility of the commanders of the combatant commands prescribed in section 164(b)(2) of this title.

(2) Subject to the authority, direction, and control of the Secretary of Defense, the Chairman of the Joint Chiefs of Staff serves as the spokesman for the commanders of the combatant commands, especially on the operational requirements of their commands. In performing such function, the Chairman shall—

(A) confer with and obtain information from the commanders of the combatant commands with respect to the requirements of their commands;

(B) evaluate and integrate such information;

(C) advise and make recommendations to the Secretary of Defense with respect to the requirements of the combatant commands, individually and collectively; and

(D) communicate, as appropriate, the requirements of the combatant commands to other elements of the Department of Defense.

(Added P.L. 99–433, § 211(a), Oct. 1, 1986, 100 Stat. 1013.)

§ 164. Commanders of combatant commands: assignment; powers and duties

(a) ASSIGNMENT AS COMBATANT COMMANDER.—(1) The President may assign an officer to serve as the commander of a unified or specified combatant command only if the officer—

(A) has the joint specialty under section 661 of this title; and

(B) has completed a full tour of duty in a joint duty assignment (as defined in section 664(f) of this title) as a general or flag officer.

(2) The President may waive paragraph (1) in the case of an officer if the President determines that such action is necessary in the national interest.

(b) RESPONSIBILITIES OF COMBATANT COMMANDERS.—(1) The commander of a combatant command is responsible to the President and to the Secretary of Defense for the performance of missions assigned to that command by the President or by the Secretary with the approval of the President.

(2) Subject to the direction of the President, the commander of a combatant command—

(A) performs his duties under the authority, direction, and control of the Secretary of Defense; and

(B) is directly responsible to the Secretary for the preparedness of the command to carry out missions assigned to the command.

(c) COMMAND AUTHORITY OF COMBATANT COMMANDERS.—(1) Unless otherwise directed by the President or the Secretary of Defense, the authority, direction, and control of the commander of a combatant command with respect to the commands and forces assigned to that command include the command functions of—

(A) giving authoritative direction to subordinate commands and forces necessary to carry out missions assigned to the command, including authoritative direction over all aspects of military operations, joint training, and logistics;

(B) prescribing the chain of command to the commands and forces within the command;

(C) organizing commands and forces within that command as he considers necessary to carry out missions assigned to the command;

(D) employing forces within that command as he considers necessary to carry out missions assigned to the command;

(E) assigning command functions to subordinate commanders;

(F) coordinating and approving those aspects of administration and support (including control of resources and equipment, internal organization, and training) and discipline necessary to carry out missions assigned to the command; and

(G) exercising the authority with respect to selecting subordinate commanders, selecting combatant command staff, suspending subordinates, and convening courts-martial, as provided in subsections (e), (f), and (g) of this section and section 822(a) of this title, respectively.

(2)(A) The Secretary of Defense shall ensure that a commander of a combatant command has sufficient authority, direction, and control over the commands and forces assigned to the command to exercise effective command over those commands and forces. In carrying out this subparagraph, the Secretary shall consult with the Chairman of the Joint Chiefs of Staff.

(B) The Secretary shall periodically review and, after consultation with the Secretaries of the military departments, the Chairman of the Joint Chiefs of Staff, and the commander of the combatant command, assign authority to the commander of the combatant command for those aspects of administration and support that the Secretary considers necessary to carry out missions assigned to the command.

(3) If a commander of a combatant command at any time considers his authority, direction, or control with respect to any of the commands or forces assigned to the command to be insufficient to command effectively, the commander shall promptly inform the Secretary of Defense.

(d) AUTHORITY OVER SUBORDINATE COMMANDERS.—Unless otherwise directed by the President or the Secretary of Defense—

(1) commanders of commands and forces assigned to a combatant command are under the authority, direction, and control of, and are responsible to, the commander of the combatant command on all matters for which the commander of the combatant command has been assigned authority under subsection (c);

(2) the commander of a command or force referred to in clause (1) shall communicate with other elements of the Department of Defense on any matter for which the commander of the combatant command has been assigned authority under subsection (c) in accordance with procedures, if any, established by the commander of the combatant command;

(3) other elements of the Department of Defense shall communicate with the commander of a command or force referred to in clause (1) on any matter for which the commander of the combatant command has been assigned authority under subsection (c) in accordance with procedures, if any, established by the commander of the combatant command; and

(4) if directed by the commander of the combatant command, the commander of a command or force referred to in clause (1) shall advise the commander of the combatant command of all communications to and from other elements of the Department of Defense on any matter for which the commander of the combatant command has not been assigned authority under subsection (c).

(e) SELECTION OF SUBORDINATE COMMANDERS.—(1) An officer may be assigned to a position as the commander of a command directly subordinate to the commander of a combatant command or, in the case of such a position that is designated under section 601 of this title as a position of importance and responsibility, may be recommended to the President for assignment to that position, only—

(A) with the concurrence of the commander of the combatant command; and

(B) in accordance with procedures established by the Secretary of Defense.

(2) The Secretary of Defense may waive the requirement under paragraph (1) for the concurrence of the commander of a combatant command with regard to the assignment (or recommendation for assignment) of a particular officer if the Secretary of Defense determines that such action is in the national interest.

(3) The commander of a combatant command shall—

(A) evaluate the duty performance of each commander of a command directly subordinate to the commander of such combatant command; and

(B) submit the evaluation to the Secretary of the military department concerned and the Chairman of the Joint Chiefs of Staff.

(f) COMBATANT COMMAND STAFF.—(1) Each unified and specified combatant command shall have a staff to assist the commander of the command in carrying out his responsibilities. Positions of responsibility on the combatant command staff shall be filled by officers from each of the armed forces having significant forces assigned to the command.

(2) An officer may be assigned to a position on the staff of a combatant command or, in the case of such a position that is designated under section 601 of this title as a position of importance and responsibility, may be recommended to the President for assignment to that position, only—

(A) with the concurrence of the commander of such command; and

(B) in accordance with procedures established by the Secretary of Defense.

(3) The Secretary of Defense may waive the requirement under paragraph (2) for the concurrence of the commander of a combatant command with regard to the assignment (or recommendation for

assignment) of a particular officer to serve on the staff of the combatant command if the Secretary of Defense determines that such action is in the national interest.

(g) AUTHORITY TO SUSPEND SUBORDINATES.—In accordance with procedures established by the Secretary of Defense, the commander of a combatant command may suspend from duty and recommend the reassignment of any officer assigned to such combatant command.

(Added P.L. 99–433, § 211(a), Oct. 1, 1986, 100 Stat. 1013; amended P.L. 100–456, § 519(a)(1), Sept. 29, 1988, 102 Stat. 1972.)

§ 165. Combatant commands: administration and support

(a) IN GENERAL.—The Secretary of Defense, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, shall provide for the administration and support of forces assigned to each combatant command.

(b) RESPONSIBILITY OF SECRETARIES OF MILITARY DEPARTMENTS.—Subject to the authority, direction, and control of the Secretary of Defense and subject to the authority of commanders of the combatant commands under section 164(c) of this title, the Secretary of a military department is responsible for the administration and support of forces assigned by him to a combatant command.

(c) ASSIGNMENT OF RESPONSIBILITY TO OTHER COMPONENTS OF DOD.—After consultation with the Secretaries of the military departments, the Secretary of Defense may assign the responsibility (or any part of the responsibility) for the administration and support of forces assigned to the combatant commands to other components of the Department of Defense (including Defense Agencies and combatant commands). A component assigned such a responsibility shall discharge that responsibility subject to the authority, direction, and control of the Secretary of Defense and subject to the authority of commanders of the combatant commands under section 164(c) of this title.

(Added P.L. 99–433, § 211(a), Oct. 1, 1986, 100 Stat. 1016.)

§ 166. Combatant commands: budget proposals

(a) COMBATANT COMMAND BUDGETS.—The Secretary of Defense shall include in the annual budget of the Department of Defense submitted to Congress a separate budget proposal for such activities of each of the unified and specified combatant commands as may be determined under subsection (b).

(b) CONTENT OF PROPOSALS.—A budget proposal under subsection (a) for funding of activities of a combatant command shall include funding proposals for such activities of the combatant command as the Secretary (after consultation with the Chairman of the Joint Chiefs of Staff) determines to be appropriate for inclusion. Activities of a combatant command for which funding may be requested in such a proposal include the following:

(1) Joint exercises.
(2) Force training.
(3) Contingencies.
(4) Selected operations.

(c) SOF TRAINING WITH FOREIGN FORCES.—A funding proposal for force training under subsection (b)(2) may include amounts for training expense payments authorized in section 2011 of this title.

(Added P.L. 99–433, § 211(a), Oct. 1, 1986, 100 Stat. 1016; amended P.L. 102–190, § 1052(b), Dec. 5, 1991, 105 Stat. 1471.)

§ 166a. Combatant commands: funding through the Chairman of Joint Chiefs of Staff

(a) CINC INITIATIVE FUND.—From funds made available in any fiscal year for the budget account in the Department of Defense known as the "CINC Initiative Fund", the Chairman of the Joint Chiefs of Staff may provide funds to the commander of a combatant command, upon the request of the commander, or, with respect to a geographic area or areas not within the area of responsibility of a commander of a combatant command, to an officer designated by the Chairman of the Joint Chiefs of Staff for such purpose. The Chairman may provide such funds for any of the activities named in subsection (b).

(b) AUTHORIZED ACTIVITIES.—Activities for which funds may be provided under subsection (a) are the following:

(1) Force training.

(2) Contingencies.

(3) Selected operations.

(4) Command and control.

(5) Joint exercises (including activities of participating foreign countries).

(6) Humanitarian and civil assistance.

(7) Military education and training to military and related civilian personnel of foreign countries (including transportation, translation, and administrative expenses).

(8) Personnel expenses of defense personnel for bilateral or regional cooperation programs.

(9) Force protection.

(c) PRIORITY.—The Chairman of the Joint Chiefs of Staff, in considering requests for funds in the CINC Initiative Fund, should give priority consideration to—

(1) requests for funds to be used for activities that would enhance the war fighting capability, readiness, and sustainability of the forces assigned to the commander requesting the funds; and

(2) the provision of funds to be used for activities with respect to an area or areas not within the area of responsibility of a commander of a combatant command that would reduce the threat to, or otherwise increase, the national security of the United States.

(d) RELATIONSHIP TO OTHER FUNDING.—Any amount provided by the Chairman of the Joint Chiefs of Staff during any fiscal year out of the CINC Initiative Fund for an activity referred to in subsection (b) shall be in addition to amounts otherwise available for that activity for that fiscal year.

(e) LIMITATIONS.—(1) Of funds made available under this section for any fiscal year—

(A) not more than $7,000,000 may be used to purchase items with a unit cost in excess of $15,000;

(B) not more than $1,000,000 may be used to pay for any expenses of foreign countries participating in joint exercises as authorized by subsection (b)(5); and

(C) not more than $2,000,000 may be used to provide military education and training (including transportation, translation, and administrative expenses) to military and related civilian personnel of foreign countries as authorized by subsection (b)(7).

(2) Funds may not be provided under this section for any activity that has been denied authorization by Congress.

(f) INCLUSION OF NORAD.—For purposes of this section, the Commander, United States Element, North American Aerospace Defense Command shall be considered to be a commander of a combatant command.

(Added P.L. 102–190, § 902(a), Dec. 5, 1991, 105 Stat. 1450; amended P.L. 102–396, § 9128, Oct. 6, 1992, 106 Stat. 1935; P.L. 102–484, § 934, Oct. 23, 1992, 106 Stat. 2477; P.L. 103–35, § 201(a), May 31, 1993, 107 Stat. 97; P.L. 105–85, § 902, Nov. 18, 1997, 111 Stat. 1854.)

§ 167. Unified combatant command for special operations forces

(a) ESTABLISHMENT.—With the advice and assistance of the Chairman of the Joint Chiefs of Staff, the President, through the Secretary of Defense, shall establish under section 161 of this title a unified combatant command for special operations forces (hereinafter in this section referred to as the "special operations command"). The principal function of the command is to prepare special operations forces to carry out assigned missions.

(b) ASSIGNMENT OF FORCES.—Unless otherwise directed by the Secretary of Defense, all active and reserve special operations forces of the armed forces stationed in the United States shall be assigned to the special operations command.

(c) GRADE OF COMMANDER.—The commander of the special operations command shall hold the grade of general or, in the case of an officer of the Navy, admiral while serving in that position, without vacating his permanent grade. The commander of such command shall be appointed to that grade by the President, by and with the advice and consent of the Senate, for service in that position.

(d) COMMAND OF ACTIVITY OR MISSION.—(1) Unless otherwise directed by the President or the Secretary of Defense, a special operations activity or mission shall be conducted under the command of the commander of the unified combatant command in whose geographic area the activity or mission is to be conducted.

(2) The commander of the special operations command shall exercise command of a selected special operations mission if directed to do so by the President or the Secretary of Defense.

(e) AUTHORITY OF COMBATANT COMMANDER.—(1) In addition to the authority prescribed in section 164(c) of this title, the commander of the special operations command shall be responsible for, and shall have the authority to conduct, all affairs of such command relating to special operations activities.

(2) The commander of such command shall be responsible for, and shall have the authority to conduct, the following functions re-

lating to special operations activities (whether or not relating to the special operations command):

(A) Developing strategy, doctrine, and tactics.

(B) Preparing and submitting to the Secretary of Defense program recommendations and budget proposals for special operations forces and for other forces assigned to the special operations command.

(C) Exercising authority, direction, and control over the expenditure of funds—

(i) for forces assigned to the special operations command; and

(ii) for special operations forces assigned to unified combatant commands other than the special operations command, with respect to all matters covered by paragraph (4) and, with respect to a matter not covered by paragraph (4), to the extent directed by the Secretary of Defense.

(D) Training assigned forces.

(E) Conducting specialized courses of instruction for commissioned and noncommissioned officers.

(F) Validating requirements.

(G) Establishing priorities for requirements.

(H) Ensuring the interoperability of equipment and forces.

(I) Formulating and submitting requirements for intelligence support.

(J) Monitoring the promotions, assignments, retention, training, and professional military education of special operations forces officers.

(3) The commander of the special operations command shall be responsible for—

(A) ensuring the combat readiness of forces assigned to the special operations command; and

(B) monitoring the preparedness to carry out assigned missions of special operations forces assigned to unified combatant commands other than the special operations command.

(4)(A) The commander of the special operations command shall be responsible for, and shall have the authority to conduct, the following:

(i) Developing and acquisition of special operations-peculiar equipment.

(ii) Acquisition of special operations-peculiar material, supplies, and services.

(B) Subject to the authority, direction, and control of the Secretary of Defense, the commander of the command, in carrying out his functions under subparagraph (A), shall have authority to exercise the functions of the head of an agency under chapter 137 of this title.

(C) The staff of the commander shall include an inspector general who shall conduct internal audits and inspections of purchasing and contracting actions through the special operations command and such other inspector general functions as may be assigned.

(f) BUDGET.—In addition to the activities of a combatant command for which funding may be requested under section 166(b) of

this title, the budget proposal of the special operations command shall include requests for funding for—

(1) development and acquisition of special operations-peculiar equipment; and

(2) acquisition of other material, supplies, or services that are peculiar to special operations activities.

(g) INTELLIGENCE AND SPECIAL ACTIVITIES.—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 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. 413 et seq.).

(h) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the activities of the special operations command. Such regulations shall include authorization for the commander of such command to provide for operational security of special operations forces and activities.

(i) IDENTIFICATION OF SPECIAL OPERATIONS FORCES.—(1) Subject to paragraph (2), for the purposes of this section special operations forces are those forces of the armed forces that—

(A) are identified as core forces or as augmenting forces in the Joint Chiefs of Staff Joint Strategic Capabilities Plan, Annex E, dated December 17, 1985;

(B) are described in the Terms of Reference and Conceptual Operations Plan for the Joint Special Operations Command, as in effect on April 1, 1986; or

(C) are designated as special operations forces by the Secretary of Defense.

(2) The Secretary of Defense, after consulting with the Chairman of the Joint Chiefs of Staff and the commander of the special operations command, may direct that any force included within the description in paragraph (1)(A) or (1)(B) shall not be considered as a special operations force for the purposes of this section.

(j) SPECIAL OPERATIONS ACTIVITIES.—For purposes of this section, special operations activities include each of the following insofar as it relates to special operations:

(1) Direct action.

(2) Strategic reconnaissance.

(3) Unconventional warfare.

(4) Foreign internal defense.

(5) Civil affairs.

(6) Psychological operations.

(7) Counterterrorism.

(8) Humanitarian assistance.

(9) Theater search and rescue.

(10) Such other activities as may be specified by the President or the Secretary of Defense.

(k) BUDGET SUPPORT FOR RESERVE ELEMENTS.—(1) Before the budget proposal for the special operations command for any fiscal year is submitted to the Secretary of Defense, the commander of the command shall consult with the Secretaries of the military departments concerning funding for reserve component special operations units. If the Secretary of a military department does not

concur in the recommended level of funding with respect to any such unit that is under the jurisdiction of the Secretary, the commander shall include with the budget proposal submitted to the Secretary of Defense the views of the Secretary of the military department concerning such funding.

(2) Before the budget proposal for a military department for any fiscal year is submitted to the Secretary of Defense, the Secretary of that military department shall consult with the commander of the special operations command concerning funding for special operations forces in the military personnel budget for a reserve component in that military department. If the commander of that command does not concur in the recommended level of funding with respect to reserve component special operations units, the Secretary shall include with the budget proposal submitted to the Secretary of Defense the views of the commander of that command.

(Added by identical amendments P.L. 99–500, 99–591, 99–661, §§ 101(c) [§ 9115(b)], 101(c) [§ 9115(b)], 1311(b), Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–122, 3341–122, 3983; amended P.L. 100–180, § 1211(d), Dec. 4, 1987, 101 Stat. 1156; P.L. 100–456, § 712, Sept. 29, 1988, 102 Stat. 1997; P.L. 102–88, § 602(c)(3), Aug. 14, 1991, 105 Stat. 444; P.L. 103–337, § 925, Oct. 5, 1994, 108 Stat. 2832.)

§ 168. Military-to-military contacts and comparable activities

(a) PROGRAM AUTHORITY.—The Secretary of Defense may conduct military-to-military contacts and comparable activities that are designed to encourage a democratic orientation of defense establishments and military forces of other countries.

(b) ADMINISTRATION.—The Secretary may provide funds appropriated for carrying out subsection (a) to the following officials for use as provided in subsection (c):

(1) The commander of a combatant command, upon the request of the commander.

(2) An officer designated by the Chairman of the Joint Chiefs of Staff, with respect to an area or areas not under the area of responsibility of a commander of a combatant command.

(3) The head of any Department of Defense component.

(c) AUTHORIZED ACTIVITIES.—An official provided funds under subsection (b) may use those funds for the following activities and expenses:

(1) The activities of traveling contact teams, including any transportation expense, translation services expense, or administrative expense that is related to such activities.

(2) The activities of military liaison teams.

(3) Exchanges of civilian or military personnel between the Department of Defense and defense ministries of foreign governments.

(4) Exchanges of military personnel between units of the armed forces and units of foreign armed forces.

(5) Seminars and conferences held primarily in a theater of operations.

(6) Distribution of publications primarily in a theater of operations.

(7) Personnel expenses for Department of Defense civilian and military personnel to the extent that those expenses relate

to participation in an activity described in paragraph (3), (4), (5), or (6).

(8) Reimbursement of military personnel appropriations accounts for the pay and allowances paid to reserve component personnel for service while engaged in any activity referred to in another paragraph of this subsection.

(d) RELATIONSHIP TO OTHER FUNDING.—Any amount provided during any fiscal year to an official under subsection (b) for an activity or expense referred to in subsection (c) shall be in addition to amounts otherwise available for those activities and expenses for that fiscal year.

(e) LIMITATIONS.—(1) Funds may not be provided under this section for a fiscal year for any activity for which—

(A) funding was proposed in the budget submitted to Congress for that fiscal year pursuant to section 1105(a) of title 31; and

(B) Congress did not authorize appropriations.

(2) An activity may not be conducted under this section with a foreign country unless the Secretary of State approves the conduct of such activity in that foreign country.

(3) Funds may not be provided under this section for a fiscal year for any country that is not eligible in that fiscal year for assistance under chapter 5 of part II of the Foreign Assistance Act of 1961.

(4) Except for those activities specifically authorized under subsection (c), funds may not be used under this section for the provision of defense articles or defense services to any country or for assistance under chapter 5 of part II of the Foreign Assistance Act of 1961.

(f) ACTIVE DUTY END STRENGTHS.—(1) A member of a reserve component referred to in paragraph (2) shall not be counted for purposes of the following personnel strength limitations:

(A) The end strength for active-duty personnel authorized pursuant to section 115(a)(1) of this title for the fiscal year in which the member carries out the activities referred to in paragraph (2).

(B) The authorized daily average for members in pay grades E–8 and E–9 under section 517 of this title for the calendar year in which the member carries out such activities.

(C) The authorized strengths for commissioned officers under section 523 of this title for the fiscal year in which the member carries out such activities.

(2) A member of a reserve component referred to in paragraph (1) is any member on active duty under an order to active duty for 180 days or more who is engaged in activities authorized under this section.

(g) MILITARY-TO-MILITARY CONTACTS DEFINED.—In this section, the term "military-to-military contacts" means contacts between members of the armed forces and members of foreign armed forces through activities described in subsection (c).

(Added P.L. 103–337, § 1316(a), 108 Stat. 2898; amended P.L. 104–106, § 416, Feb. 10, 1996, 110 Stat. 289.)

CHAPTER 7—BOARDS, COUNCILS, AND COMMITTEES

Sec.
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§ 171. Armed Forces Policy Council

(a) There is in the Department of Defense an Armed Forces Policy Council consisting of—

(1) the Secretary of Defense, as Chairman, with the power of decision;

(2) the Deputy Secretary of Defense;

(3) the Under Secretary of Defense for Acquisition and Technology;

(4) the Secretary of the Army;

(5) the Secretary of the Navy;

(6) the Secretary of the Air Force;

(7) the Under Secretary of Defense for Policy;

(8) the Deputy Under Secretary of Defense for Acquisition and Technology;

(9) the Chairman of the Joint Chiefs of Staff;

(10) the Chief of Staff of the Army;

(11) the Chief of Naval Operations;

(12) the Chief of Staff of the Air Force; and

(13) the Commandant of the Marine Corps.

(b) The Armed Forces Policy Council shall advise the Secretary of Defense on matters of broad policy relating to the armed forces and shall consider and report on such other matters as the Secretary of Defense may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 8; Aug. 6, 1958, P.L. 85–599, § 9(c), 72 Stat. 521; Oct. 27, 1972, P.L. 92–596, § 5, 86 Stat. 1318; Oct. 21, 1977, P.L. 95–140, § 3(b), 91 Stat. 1173; P.L. 98–94, § 1213, Sept. 24, 1983, 97 Stat. 687; amended identically P.L. 99–500, 99–591, 99–661, §§ 101(c), [§ 903(e)], 101(c) [§ 903(e)], 903(e), Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–133, 3341–133, 3912; P.L. 103–160, § 904(d)(1), (3), Nov. 30, 1993, 107 Stat. 1728.)

§ 172. Ammunition storage board

(a) The Secretaries of the military departments, acting through a joint board selected by them composed of officers, civilian officers and employees of the Department of Defense, or both, shall keep

informed on stored supplies of ammunition and components thereof for use of the Army, Navy, Air Force, and Marine Corps, with particular regard to keeping those supplies properly dispersed and stored and to preventing hazardous conditions from arising to endanger life and property inside or outside of storage reservations.

(b) The board shall confer with and advise the Secretaries of the military departments in carrying out the recommendations in House Document No. 199 of the Seventieth Congress.

(Aug. 10, 1956, ch. 1041, 70A Stat. 8; Sept. 23, 1996, P.L. 104–201, § 909, 110 Stat. 2621.)

§ 173. Advisory personnel

(a) The Secretary of Defense may establish such advisory committees and employ such part-time advisers as he considers necessary for the performance of his functions and those of the agencies under his control.

(b) A person who serves as a member of a committee may not be paid for that service while holding another position or office under the United States for which he receives compensation. Other members and part-time advisers shall (except as otherwise specifically authorized by law) serve without compensation for such service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 8; Nov. 2, 1966, P.L. 89–718, § 2, 80 Stat. 1115; Feb. 10, 1996, P.L. 104–106, § 1061(e)(1), 110 Stat. 443.)

§ 174. Advisory personnel: research and development

(a) The Secretary of each military department may establish such advisory committees and panels as are necessary for the research and development activities of his department and may employ such part-time advisers as he considers necessary to carry out those activities.

(b) A person who serves as a member of such a committee or panel may not be paid for that service while holding another position or office under the United States for which he receives compensation. Other members and part-time advisers shall (except as otherwise specifically authorized by law) serve without compensation for such service.

(c) The Secretary concerned may delegate any authority under this section to—

(1) the Under Secretary of his department;

(2) an Assistant Secretary of his department; or

(3) the chief, and one assistant to the chief, of any technical service, bureau, or office.

(Aug. 10, 1956, ch. 1041, 70A Stat. 9; Feb. 10, 1996, P.L. 104–106, § 1061(e)(1), 110 Stat. 443.)

§ 175. Reserve Forces Policy Board

There is in the Office of the Secretary of Defense a Reserve Forces Policy Board. The functions, membership, and organization of that board are set forth in section 10301 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 9; Dec. 1, 1967, P.L. 90–168, § 2(3), (4), 81 Stat. 521; P.L. 98–94, § 1212(b), Sept. 24, 1983, 97 Stat. 687; P.L. 98–525, § 1306, § 1405(4), Oct. 19, 1984, 98 Stat. 2612, 2622; P.L. 98–557, § 21, Oct. 30, 1984, 98 Stat. 2870; P.L. 99–433, § 531(a)(1), Oct. 1, 1986, 100 Stat. 1063; P.L. 103–337, §§ 921, 1661(b)(3), Oct. 5, 1994, 108 Stat. 2829, 2981.)

§ 176. Armed Forces Institute of Pathology [1]

(a)(1) There is in the Department of Defense an Institute to be known as the Armed Forces Institute of Pathology (hereinafter in this section referred to as the "Institute"), which has the responsibilities, functions, authority, and relationships set forth in this section. The Institute shall be a joint entity of the three military departments, subject to the authority, direction, and control of the Secretary of Defense.

(2) The Institute shall consist of a Board of Governors, a Director, two Deputy Directors, and a staff of such professional, technical, and clerical personnel as may be required.

(3) The Board of Governors shall consist of the Assistant Secretary of Defense for Health Affairs, who shall serve as chairman of the Board of Governors, the Assistant Secretary of Health and Human Services for Health, the Surgeons General of the Army, Navy, and Air Force, the Chief Medical Director of the Department of Veterans Affairs, and a former Director of the Institute, as designated by the Secretary of Defense, or the designee of any of the foregoing.

(4) The Director and the Deputy Directors shall be appointed by the Secretary of Defense.

(b)(1) In carrying out the provisions of this section, the Institute is authorized to—

(A) contract with the American Registry of Pathology (established under section 177 of this title) for cooperative enterprises in medical research, consultation, and education between the Institute and the civilian medical profession under such conditions as may be agreed upon between the Board of Governors and the American Registry of Pathology;

(B) make available at no cost to the American Registry of Pathology such space, facilities, equipment, and support services within the Institute as the Board of Governors deems necessary for the accomplishment of their mutual cooperative enterprises; and

(C) contract with the American Registry of Pathology for the services of such professional, technical, or clerical personnel as are necessary to fulfill their cooperative enterprises.

(2) No contract may be entered into under paragraph (1) which obligates the Institute to make outlays in advance of the enactment of budget authority for such outlays.

(c) The Director is authorized, with the approval of the Board of Governors, to enter into agreements with the American Registry of Pathology for the services at any time of not more than six distinguished pathologists or scientists of demonstrated ability and experience for the purpose of enhancing the activities of the Institute in education, consultation, and research. Such pathologists or scientists may be appointed by the Director to administrative positions within the components or subcomponents of the Institute and may be authorized by the Director to exercise any or all profes-

[1] Section 1067(b) of the National Defense Authorization Act for Fiscal Year 1995, as amended, provides:

(b) DESIGNATION.—The public facility of the Armed Forces Institute of Pathology shall also be known as the National Museum of Health and Medicine.

sional duties within the Institute, notwithstanding any other provision of law. The Secretary of Defense, on a case-by-case basis, may waive the limitation on the number of distinguished pathologists or scientists with whom agreements may be entered into under this subsection if the Secretary determines that such waiver is in the best interest of the Department of Defense.

(d) The Secretary of Defense shall promulgate such regulations as may be necessary to prescribe the organization, functions, and responsibilities of the Institute.

(Added P.L. 94–361, § 811(b), July 14, 1976, 90 Stat. 933; amended P.L. 96–513, § 511(6), Dec. 12, 1980, 94 Stat. 2920; P.L. 101–189, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; P.L. 103–160, § 733, Nov. 30, 1993, 107 Stat. 1697.)

§ 177. American Registry of Pathology

(a)(1) There is authorized to be established a nonprofit corporation to be known as the American Registry of Pathology which shall not for any purpose be an agency or establishment of the United States Government. The American Registry of Pathology shall be subject to the provisions of this section and, to the extent not inconsistent with this section, to the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29–501 et seq.).

(2) The American Registry of Pathology shall have a Board of Members (hereinafter in this section referred to as the "Board") consisting of not less than eleven individuals who are representatives of those professional societies and organizations which sponsor individual registries of pathology at the Armed Forces Institute of Pathology, of whom one shall be elected annually by the Board to serve as chairman. Each such sponsor shall appoint one member to the Board for a term of four years.

(3) The American Registry of Pathology shall have a Director, who shall be appointed by the Board with the concurrence of the Director of the Armed Forces Institute of Pathology, and such other officers as may be named and appointed by the Board. Such officers shall be compensated at rates fixed by the Board and shall serve at the pleasure of the Board.

(4) The members of the initial Board shall serve as incorporators and shall take whatever actions are necessary to establish under the District of Columbia Nonprofit Corporation Act the corporation authorized by paragraph (1).

(5) The term of office of each member of the Board shall be four years, except that (A) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, (B) the terms of office of members first taking office shall begin on the date of incorporation and shall expire, as designated at the time of their appointment and to the maximum extent practicable, one fourth at the end of one year, one fourth at the end of two years, one fourth at the end of three years, and one fourth at the end of four years, and (C) a member whose term has expired may serve until his successor has qualified. No member shall be eligible to serve more than two consecutive terms of four years each.

(6) Any vacancy in the Board shall not affect its powers, but such vacancy shall be filled in the manner in which the original appointment was made.

(b) In order to carry out the purposes of this section, the American Registry of Pathology is authorized to—

(1) enter into contracts with the Armed Forces Institute of Pathology for the provision of such services and personnel as may be necessary to carry out their cooperative enterprises;

(2) enter into contracts with public and private organizations for the writing, editing, printing, and publishing of fascicles of tumor pathology, atlases, and other material;

(3) accept gifts and grants from and enter into contracts with individuals, private foundations, professional societies, institutions, and governmental agencies;

(4) enter into agreements with professional societies for the establishment and maintenance of Registries of Pathology; and

(5) serve as a focus for the interchange between military and civilian pathology and encourage the participation of medical, dental, and veterinary sciences in pathology for the mutual benefit of military and civilian medicine.

(c) In the performance of the functions set forth in subsection (b), the American Registry of Pathology is authorized to—

(1) enter into such other contracts, leases, cooperative agreements, or other transactions as the Board deems appropriate to conduct the activities of the American Registry of Pathology; and

(2) charge such fees for professional services as the Board deems reasonable and appropriate.

(d) The American Registry of Pathology may transmit to the Director and the Board of Governors of the Armed Forces Institute of Pathology and to the sponsors referred to in subsection (a)(2) annually, and at such other times as it deems desirable, a comprehensive and detailed report of its operations, activities, and accomplishments.

(Added P.L. 94–361, § 811(b), July 14, 1976, 90 Stat. 934; amended P.L. 98–525, § 1405(5), Oct. 19, 1984, 98 Stat. 2622.)

§ 178. Henry M. Jackson Foundation for the Advancement of Military Medicine

(a) There is authorized to be established a nonprofit corporation to be known as the Henry M. Jackson Foundation for the Advancement of Military Medicine (hereinafter in this section referred to as the "Foundation") which shall not for any purpose be an agency or instrumentality of the United States Government. The Foundation shall be subject to the provisions of this section and, to the extent not inconsistent with this section, the Corporations and Associations Articles of the State of Maryland.

(b) It shall be the purpose of the Foundation (1) to carry out medical research and education projects under cooperative arrangements with the Uniformed Services University of the Health Sciences, (2) to serve as a focus for the interchange between military and civilian medical personnel, and (3) to encourage the participation of the medical, dental, nursing, veterinary, and other bio-

medical sciences in the work of the Foundation for the mutual benefit of military and civilian medicine.

(c)(1) The Foundation shall have a Council of Directors (hereinafter in this section referred to as the "Council") composed of—

(A) the Chairmen and ranking minority members of the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives (or their designees from the membership of such committees), who shall be ex officio members,

(B) the Dean of the Uniformed Services University of the Health Sciences, who shall be an ex officio member, and

(C) four members appointed by the ex officio members of the Council designated in clauses (A) and (B).

(2) The term of office of each member of the Council appointed under clause (C) of paragraph (1) shall be four years, except that—

(A) any person appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

(B) the terms of office of members first taking office shall expire, as designated by the ex officio members of the Council at the time of the appointment, two at the end of two years and two at the end of four years.

(3) The Council shall elect a chairman from among its members.

(d)(1) The Foundation shall have an Executive Director who shall be appointed by the Council and shall serve at the pleasure of the Council. The Executive Director shall be responsible for the day-to-day operations of the Foundation and shall have such specific duties and responsibilities as the Council shall prescribe.

(2) The rate of compensation of the Executive Director shall be fixed by the Council.

(e) The initial members of the Council shall serve as incorporators and take whatever actions as are necessary to establish under the Corporations and Associations Articles of the State of Maryland the corporation authorized by subsection (a).

(f) Any vacancy in the Council shall not affect its powers, but shall be filled in the same manner in which the original designation or appointment was made.

(g) In order to carry out the purposes of this section, the Foundation is authorized to—

(1) enter into contracts with, accept grants from, and make grants to the Uniformed Services University of the Health Sciences for the purpose of carrying out cooperative enterprises in medical research, medical consultation, and medical education, including contracts for provision of such personnel and services as may be necessary to carry out such cooperative enterprises;

(2) enter into contracts with public and private organizations for the writing, editing, printing, and publishing of books and other material;

(3) take such action as may be necessary to obtain patents and licenses for devices and procedures developed by the Foundation and its employees;

(4) accept, hold, administer, invest, and spend any gift, devise, or bequest of real or personal property made to the Foundation;

(5) enter into contracts with individuals, public or private organizations, professional societies, and government agencies for the purpose of carrying out the functions of the Foundation;

(6) enter into such other contracts, leases, cooperative agreements, and other transactions as the Executive Director considers appropriate to conduct the activities of the Foundation; and

(7) charge such fees for professional services furnished by the Foundation as the Executive Director determines reasonable and appropriate.

(h) A person who is a full-time or part-time employee of the Foundation may not be an employee (full-time or part-time) of the Federal Government.

(i) The Council shall transmit to the President annually, and at such other times as the Council considers desirable, a report on the operations, activities, and accomplishments of the Foundation.

(Added P.L. 98–36, § 2(a), May 27, 1983, 97 Stat. 200; amended P.L. 98–132, § 2(a)(1), Oct. 17, 1983, 97 Stat. 849; P.L. 101–189, § 726(b)(2), Nov. 29, 1989, 103 Stat. 1480; P.L. 104–106, § 1502(a)(2), Feb. 10, 1996, 110 Stat. 502; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 179. Nuclear Weapons Council

(a) There is a Joint Nuclear Weapons Council (hereinafter in this section referred to as the "Council") composed of three members as follows:

(1) The Under Secretary of Defense for Acquisition and Technology.

(2) The Vice Chairman of the Joint Chiefs of Staff.

(3) The Under Secretary for Nuclear Security of the Department of Energy.

(b)(1) Except as provided in paragraph (2), the Chairman of the Council shall be the member designated under subsection (a)(1).

(2) A meeting of the Council shall be chaired by the Under Secretary for Nuclear Security of the Department of Energy whenever the matter under consideration is within the primary responsibility or concern of the Department of Energy, as determined by majority vote of the Council.

(3) The Council shall meet not less often than once every three months.

(c)(1) The Secretary of Defense and the Secretary of Energy shall enter into an agreement with the Council to furnish necessary staff and administrative services to the Council.

(2) The Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs shall be the Staff Director of the Council.

(3)(A) Whenever the position of Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs has been vacant a period of more than 6 months, the Secretary of Energy shall designate a qualified individual to serve as acting staff director of the Council until the position of that Assistant to the Secretary is filled.

(B) An individual appointed under subparagraph (A) shall possess substantial technical and policy experience relevant to the management and oversight of nuclear weapons programs.

(d) The Council shall be responsible for the following matters:

(1) Preparing the annual Nuclear Weapons Stockpile Memorandum.

(2) Developing nuclear weapons stockpiles options and the costs of such options.

(3) Coordinating programming and budget matters pertaining to nuclear weapons programs between the Department of Defense and the Department of Energy.

(4) Identifying various options for cost-effective schedules for nuclear weapons production.

(5) Considering safety, security, and control issues for existing weapons and for proposed new weapon program starts.

(6) Ensuring that adequate consideration is given to design, performance, and cost tradeoffs for all proposed new nuclear weapons programs.

(7) Providing broad guidance regarding priorities for research on nuclear weapons.

(8) Coordinating and approving activities conducted by the Department of Energy for the study, development, production, and retirement of nuclear warheads, including concept definition studies, feasibility studies, engineering development, hardware component fabrication, warhead production, and warhead retirement.

(9) Preparing comments on annual proposals for budget levels for research on nuclear weapons and transmitting those comments to the Secretary of Defense and the Secretary of Energy before the preparation of the annual budget requests by the Secretaries of those departments.

(10) Providing—

(A) broad guidance regarding priorities for research on improved conventional weapons, and

(B) comments on annual proposals for budget levels for research on improved conventional weapons,

and transmitting such guidance and comments to the Secretary of Defense before the preparation of the annual budget request of the Department of Defense.

(e) In addition to the responsibilities set forth in subsection (d), the Council shall also submit to Congress a report on any analysis conducted by the Council with respect to difficulties at nuclear weapons laboratories or nuclear weapons production plants that have significant bearing on confidence in the safety or reliability of nuclear weapons or nuclear weapon types.

(f) Each fiscal year, at the same time the President submits the budget pursuant to section 1105 of title 31, the Chairman of the Council, through the Secretary of Energy, 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, in classified form, on the following:

(1) The effectiveness and efficiency of the Council, and of the deliberative and decisionmaking processes used by the

Council, in carrying out the responsibilities described in subsection (d).

(2) A description of all activities conducted by the Department of Energy during that fiscal year, or planned to be conducted by the Department of Energy during the next fiscal year, for the study, development, production, and retirement of nuclear warheads and that have been approved by the Council, including a description of—

(A) the concept definition activities and feasibility studies conducted or planned to be conducted by the Department of Energy;

(B) the schedule for completion of each such activity or study; and

(C) the degree to which each such activity or study is consistent with United States policy for new nuclear warhead development or warhead modification and with established or projected military requirements.

(3) A description of the activities of the Council during the 12-month period ending on the date of the report together with any assessments or studies conducted by the Council during that period.

(4) A description of the highest priority requirements of the Department of Defense with respect to the Department of Energy stockpile stewardship and management program as of that date.

(5) An assessment of the extent to which the requirements referred to in paragraph (4) are being addressed by the Department of Energy as of that date.

(Added P.L. 99–661, § 3137(a)(1), Nov. 14, 1986, 100 Stat. 4065; amended P.L. 100–180, § 1231(2), Dec. 4, 1987, 101 Stat. 1160; P.L. 100–456, § 1233(h), Sept. 29, 1988, 102 Stat. 2058; P.L. 102–484, § 3133, Oct. 23, 1992, 106 Stat. 2639; P.L. 103–160, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; P.L. 103–337, § 3152, Oct. 5, 1994, 108 Stat. 3090; P.L. 104–106, §§ 904(b)(1), 1502(a)(7), Feb. 10, 1996, 110 Stat. 403, 502; P.L. 104–201, § 3159(c), Sept. 23, 1996, 110 Stat. 2842; P.L. 106–65, §§ 1067(1), 3163(a), (c), Oct. 5, 1999, 113 Stat. 774, 944; P.L. 106–398, § 1[3152(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–464.)

§ 180. Service academy athletic programs: review board

(a) INDEPENDENT REVIEW BOARD.—The Secretary of Defense shall appoint a board to review the administration of the athletics programs of the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy.

(b) COMPOSITION OF BOARD.—The Secretary shall appoint the members of the board from among distinguished administrators of institutions of higher education, members of Congress, members of the Boards of Visitors of the academies, and other experts in collegiate athletics programs. The Superintendents of the three academies shall be members of the board. The Secretary shall designate one member of the board, other than a Superintendent of an academy, as Chairman.

(c) DUTIES.—The board shall, on an annual basis—

(1) review all aspects of the athletics programs of the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy, including—

(A) the policies relating to the administration of such programs;

(B) the appropriateness of the balance between the emphasis placed by each academy on athletics and the emphasis placed by such academy on academic pursuits; and

(C) the extent to which all athletes in all sports are treated equitably under the athletics program of each academy; and

(2) determine ways in which the administration of the athletics programs at the academies can serve as models for the administration of athletics programs at civilian institutions of higher education.

(d) ADMINISTRATIVE PROVISIONS.—(1) Each member of the board who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for Executive Schedule Level IV under section 5315 of title 5, for each day (including travel time) during which such member is engaged in the performance of the duties of the board. Members of the board who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(2) The members of the board shall be allowed travel expenses, 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.

(Added P.L. 102–190, § 513(a), Dec. 5, 1991, 105 Stat. 1360; amended P.L. 106–65, § 1066(a)(2), Oct. 5, 1999, 113 Stat. 770; P.L. 106–398, § 1[1087(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290.)

§ 181. Joint Requirements Oversight Council

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a Joint Requirements Oversight Council in the Department of Defense.

(b) MISSION.—In addition to other matters assigned to it by the President or Secretary of Defense, the Joint Requirements Oversight Council shall—

(1) assist the Chairman of the Joint Chiefs of Staff in identifying and assessing the priority of joint military requirements (including existing systems and equipment) to meet the national military strategy;

(2) assist the Chairman in considering alternatives to any acquisition program that has been identified to meet military requirements by evaluating the cost, schedule, and performance criteria of the program and of the identified alternatives; and

(3) as part of its mission to assist the Chairman in assigning joint priority among existing and future programs meeting valid requirements, ensure that the assignment of such priorities conforms to and reflects resource levels projected by the Secretary of Defense through defense planning guidance.

(c) COMPOSITION.—(1) The Joint Requirements Oversight Council is composed of—

(A) the Chairman of the Joint Chiefs of Staff, who is the chairman of the Council;

(B) an Army officer in the grade of general;
(C) a Navy officer in the grade of admiral;
(D) an Air Force officer in the grade of general; and
(E) a Marine Corps officer in the grade of general.

(2) Members of the Council, other than the Chairman of the Joint Chiefs of Staff, shall be selected by the Chairman of the Joint Chiefs of Staff, after consultation with the Secretary of Defense, from officers in the grade of general or admiral, as the case may be, who are recommended for such selection by the Secretary of the military department concerned.

(3) The functions of the Chairman of the Joint Chiefs of Staff as chairman of the Council may only be delegated to the Vice Chairman of the Joint Chiefs of Staff.

(d) AVAILABILITY OF OVERSIGHT INFORMATION TO CONGRESSIONAL DEFENSE COMMITTEES.—(1) The Secretary of Defense shall ensure that, in the case of a recommendation by the Chairman to the Secretary that is approved by the Secretary, oversight information with respect to such recommendation that is produced as a result of the activities of the Joint Requirements Oversight Council is made available in a timely fashion to the congressional defense committees.

(2) In this subsection:

(A) The term "oversight information" means information and materials comprising analysis and justification that are prepared to support a recommendation that is made to, and approved by, the Secretary of Defense.

(B) 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.

(Added P.L. 104–106, § 905, Feb. 10, 1996, 110 Stat. 403; amended P.L. 104–201, § 908, Sept. 23, 1996, 110 Stat. 2621; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 182. Center for Excellence in Disaster Management and Humanitarian Assistance

(a) ESTABLISHMENT.—The Secretary of Defense may operate a Center for Excellence in Disaster Management and Humanitarian Assistance (in this section referred to as the "Center").

(b) MISSIONS.—(1) The Center shall be used to provide and facilitate education, training, and research in civil-military operations, particularly operations that require international disaster management and humanitarian assistance and operations that require coordination between the Department of Defense and other agencies.

(2) The Center shall be used to make available high-quality disaster management and humanitarian assistance in response to disasters.

(3) The Center shall be used to provide and facilitate education, training, interagency coordination, and research on the following additional matters:

(A) Management of the consequences of nuclear, biological, and chemical events.

(B) Management of the consequences of terrorism.

(C) Appropriate roles for the reserve components in the management of such consequences and in disaster management and humanitarian assistance in response to natural disasters.

(D) Meeting requirements for information in connection with regional and global disasters, including the use of advanced communications technology as a virtual library.

(E) Tropical medicine, particularly in relation to the medical readiness requirements of the Department of Defense.

(4) The Center shall develop a repository of disaster risk indicators for the Asia-Pacific region.

(5) The Center shall perform such other missions as the Secretary of Defense may specify.

(c) JOINT OPERATION WITH EDUCATIONAL INSTITUTION AUTHORIZED.—The Secretary of Defense may enter into an agreement with appropriate officials of an institution of higher education to provide for joint operation of the Center. Any such agreement shall provide for the institution to furnish necessary administrative services for the Center, including administration and allocation of funds.

(d) ACCEPTANCE OF DONATIONS.—(1) Except as provided in paragraph (2), the Secretary of Defense may accept, on behalf of the Center, donations to be used to defray the costs of the Center or to enhance the operation of the Center. Such donations may be accepted from any agency of the Federal Government, any State or local government, any foreign government, any foundation or other charitable organization (including any that is organized or operates under the laws of a foreign country), or any other private source in the United States or a foreign country.

(2) The Secretary may not accept a donation under paragraph (1) if the acceptance of the donation would compromise or appear to compromise—

(A) the ability of the Department of Defense, any employee of the Department, or members of the armed forces, to carry out any responsibility or duty of the Department in a fair and objective manner; or

(B) the integrity of any program of the Department of Defense or of any person involved in such a program.

(3) The Secretary shall prescribe written guidance setting forth the criteria to be used in determining whether or not the acceptance of a foreign donation would have a result described in paragraph (2).

(4) Funds accepted by the Secretary under paragraph (1) as a donation on behalf of the Center shall be credited to appropriations available to the Department of Defense for the Center. Funds so credited shall be merged with the appropriations to which credited and shall be available for the Center for the same purposes and the same period as the appropriations with which merged.

(Added P.L. 105–85, § 382(a)(1), Nov. 18, 1997, 111 Stat. 1709.)

§ 183. Advisory committees: annual justification required

(a) ANNUAL REPORT.—The Secretary of Defense shall include in the annual report of the Secretary under section 113(c) of this title a report on advisory committees of the Department of Defense. In each such report, the Secretary shall—

(1) identify each advisory committee that the Secretary proposes to support, or that the Secretary is required by law or direction from the President to support, during the next fiscal year; and

(2) for each committee identified under paragraph (1), set forth—

(A) the justification or requirement for that committee; and

(B) the projected cost to the Department of Defense to support that committee during the next fiscal year.

(b) ADVISORY COMMITTEE DEFINED.—In this section, the term "advisory committee" means an entity that is subject to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(Added P.L. 105–85, § 904(a), Nov. 18, 1997, 111 Stat. 1854.)

§ 184. Department of Defense regional centers for security studies

(a) ADVANCE NOTIFICATION TO CONGRESS OF THE ESTABLISHMENT OF NEW REGIONAL CENTERS.—After the date of the enactment of this section, a regional center for security studies may not be established in the Department of Defense until—

(1) the Secretary of Defense submits to Congress a notification of the intent of the Secretary to establish the center, including a description of the mission and functions of the proposed center and a justification for the proposed center; and

(2) a period of 90 days has elapsed after the date on which that notification is submitted.

(b) REQUIREMENT FOR ANNUAL REPORT.—Not later than February 1 of 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 operation of the Department of Defense regional centers for security studies during the preceding fiscal year. The annual report shall include, for each regional center, the following information:

(1) The status and objectives of the center.

(2) The budget of the center, including the costs of operating the center.

(3) A description of the extent of the international participation in the programs of the center, including the costs incurred by the United States for the participation of each foreign nation.

(4) A description of the foreign gifts and donations, if any, accepted under any of the following provisions of law:

(A) Section 2611 of this title.

(B) Section 1306 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2892).

(C) Section 1065 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2653; 10 U.S.C. 113 note).

(c) REGIONAL CENTER FOR SECURITY STUDIES DEFINED.—For the purposes of this section, a regional center for security studies is any center within the Department of Defense that—

(1) is operated, and designated as such, by the Secretary of Defense for the study of security issues relating to a specified geographic region of the world; and

(2) serves as a forum for bilateral and multilateral communication and military and civilian exchanges with nations in that region.

(Added P.L. 106–398, § 1[912(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–229.)

CHAPTER 8—DEFENSE AGENCIES AND DEPARTMENT OF DEFENSE FIELD ACTIVITIES

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SUBCHAPTER I—COMMON SUPPLY AND SERVICE ACTIVITIES

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195. Defense Automated Printing Service: applicability of Federal printing requirements.

§ 191. Secretary of Defense: authority to provide for common performance of supply or service activities

(a) AUTHORITY.—Whenever the Secretary of Defense determines such action would be more effective, economical, or efficient, the Secretary may provide for the performance of a supply or service activity that is common to more than one military department by a single agency of the Department of Defense.

(b) DESIGNATION OF COMMON SUPPLY OR SERVICE AGENCY.—Any agency of the Department of Defense established under subsection (a) (or under the second sentence of section 125(d) of this title (as in effect before October 1, 1986)) for the performance of a supply or service activity referred to in such subsection shall be designated as a Defense Agency or a Department of Defense Field Activity.

(Added P.L. 99–433, § 301(a)(2), Oct. 1, 1986, 100 Stat. 1019 [former § 191 transferred to § 201]; amended P.L. 100–26, § 7(i)(1), April 21, 1987, 101 Stat. 282.)

§ 192. Defense Agencies and Department of Defense Field Activities: oversight by the Secretary of Defense

(a) OVERALL SUPERVISION.—(1) The Secretary of Defense shall assign responsibility for the overall supervision of each Defense Agency and Department of Defense Field Activity designated under section 191(b) of this title—

(A) to a civilian officer within the Office of the Secretary of Defense listed in section 131(b) of this title; or

(B) to the Chairman of the Joint Chiefs of Staff.

(2) An official assigned such a responsibility with respect to a Defense Agency or Department of Defense Field Activity shall advise the Secretary of Defense on the extent to which the program recommendations and budget proposals of such agency or activity

conform with the requirements of the military departments and of the unified and specified combatant commands.

(3) This subsection does not apply to the Defense Intelligence Agency or the National Security Agency.

(b) PROGRAM AND BUDGET REVIEW.—The Secretary of Defense shall establish procedures to ensure that there is full and effective review of the program recommendations and budget proposals of each Defense Agency and Department of Defense Field Activity.

(c) PERIODIC REVIEW.—(1) Periodically (and not less often than every two years), the Secretary of Defense shall review the services and supplies provided by each Defense Agency and Department of Defense Field Activity to ensure that—

(A) there is a continuing need for each such agency and activity; and

(B) the provision of those services and supplies by each such agency and activity, rather than by the military departments, is a more effective, economical, or efficient manner of providing those services and supplies or of meeting the requirements for combat readiness of the armed forces.

(2) Paragraph (1) shall apply to the National Security Agency as determined appropriate by the Secretary, in consultation with the Director of Central Intelligence. The Secretary shall establish procedures under which information required for review of the National Security Agency shall be obtained.

(d) SPECIAL RULE FOR DEFENSE COMMISSARY AGENCY.—Notwithstanding the results of any periodic review under subsection (c) with regard to the Defense Commissary Agency, the Secretary of Defense may not transfer to the Secretary of a military department the responsibility to manage and fund the provision of services and supplies provided by the Defense Commissary Agency unless the transfer of the management and funding responsibility is specifically authorized by a law enacted after October 17, 1998.

(Added P.L. 99–433, § 301(a)(2), Oct. 1, 1986, 100 Stat. 1020 [former § 192 transferred to § 1605]; amended P.L. 105–261, § 361(a), Oct. 17, 1998, 112 Stat. 1984; amended P.L. 106–65, § 1066(a)(3), Oct. 5, 1999, 113 Stat. 770.)

§ 193. Combat support agencies: oversight

(a) COMBAT READINESS.—(1) Periodically (and not less often than every two years), the Chairman of the Joint Chiefs of Staff shall submit to the Secretary of Defense a report on the combat support agencies. Each such report shall include—

(A) a determination with respect to the responsiveness and readiness of each such agency to support operating forces in the event of a war or threat to national security; and

(B) any recommendations that the Chairman considers appropriate.

(2) In preparing each such report, the Chairman shall review the plans of each such agency with respect to its support of operating forces in the event of a war or threat to national security. After consultation with the Secretaries of the military departments and the commanders of the unified and specified combatant commands, as appropriate, the Chairman may, with the approval of the Secretary of Defense, take steps to provide for any revision of those plans that the Chairman considers appropriate.

(b) PARTICIPATION IN JOINT TRAINING EXERCISES.—The Chairman shall—

(1) provide for the participation of the combat support agencies in joint training exercises to the extent necessary to ensure that those agencies are capable of performing their support missions with respect to a war or threat to national security; and

(2) assess the performance in joint training exercises of each such agency and, in accordance with guidelines established by the Secretary of Defense, take steps to provide for any change that the Chairman considers appropriate to improve that performance.

(c) READINESS REPORTING SYSTEM.—The Chairman shall develop, in consultation with the director of each combat support agency, a uniform system for reporting to the Secretary of Defense, the commanders of the unified and specified combatant commands, and the Secretaries of the military departments concerning the readiness of each such agency to perform with respect to a war or threat to national security.

(d) REVIEW OF NATIONAL SECURITY AGENCY AND NATIONAL IMAGERY AND MAPPING AGENCY.—(1) Subsections (a), (b), and (c) shall apply to the National Security Agency and the National Imagery and Mapping Agency, but only with respect to combat support functions that the agencies perform for the Department of Defense.

(2) The Secretary, after consulting with the Director of Central Intelligence, shall establish policies and procedures with respect to the application of subsections (a), (b), and (c) to the National Security Agency and the National Imagery and Mapping Agency.

(e) COMBAT SUPPORT CAPABILITIES OF DIA, NSA, AND NIMA.—The Secretary of Defense, in consultation with the Director of Central Intelligence, shall develop and implement, as they may determine to be necessary, policies and programs to correct such deficiencies as the Chairman of the Joint Chiefs of Staff and other officials of the Department of Defense may identify in the capabilities of the Defense Intelligence Agency, the National Security Agency, and the National Imagery and Mapping Agency to accomplish assigned missions in support of military combat operations.

(f) DEFINITION OF COMBAT SUPPORT AGENCY.—In this section, the term "combat support agency" means any of the following Defense Agencies:

(1) The Defense Communications Agency.

(2) The Defense Intelligence Agency.

(3) The Defense Logistics Agency.

(4) The National Imagery and Mapping Agency.

(5) Any other Defense Agency designated as a combat support agency by the Secretary of Defense.

(Added P.L. 99–433, § 301(a)(2), Oct. 1, 1986, 100 Stat. 1020; amended P.L. 104–201, § 1112(c), Sept. 23, 1996, 110 Stat. 2683; P.L. 105–85, § 1073(a)(5), Nov. 18, 1997, 111 Stat. 1900.)

§ 194. Limitations on personnel

(a) CAP ON HEADQUARTERS MANAGEMENT PERSONNEL.—The total number of members of the armed forces and civilian employees assigned or detailed to permanent duty in the management headquarters activities or management headquarters support

activities in the Defense Agencies and Department of Defense Field Activities may not exceed the number that is the number of such members and employees assigned or detailed to such duty on September 30, 1989.

(b) CAP ON OTHER PERSONNEL.—The total number of members of the armed forces and civilian employees assigned or detailed to permanent duty in the Defense Agencies and Department of Defense Field Activities, other than members and employees assigned to management headquarters activities or management headquarters support activities, may not exceed the number that is the number of such members and employees assigned or detailed to such duty on September 30, 1989.

(c) PROHIBITION AGAINST CERTAIN ACTIONS TO EXCEED LIMITATIONS.—The limitations in subsections (a) and (b) may not be exceeded by recategorizing or redefining duties, functions, offices, or organizations.

(d) EXCLUSION OF NSA.—The National Security Agency shall be excluded in computing and maintaining the limitations required by this section.

(e) WAIVER.—The limitations in this section do not apply—

(1) in time of war; or

(2) during a national emergency declared by the President or Congress.

(f) DEFINITIONS.—In this section, the terms "management headquarters activities" and "management headquarters support activities" have the meanings given those terms in Department of Defense Directive 5100.73, entitled "Department of Defense Management Headquarters and Headquarters Support Activities" and dated January 7, 1985.

(Added P.L. 99–433, § 301(a)(2), Oct. 1, 1986, 100 Stat. 1021; amended P.L. 100–180, § 1314(b)(3), Dec. 4, 1987, 101 Stat. 1175; P.L. 101–189, § 1622(h), Nov. 29, 1989, 103 Stat. 1605.)

§ 195. Defense Automated Printing Service: applicability of Federal printing requirements [1]

The Defense Automated Printing Service shall comply fully with the requirements of section 501 of title 44 relating to the production and procurement of printing, binding, and blank-book work.

(Added P.L. 105–85, § 383(a), Nov. 18, 1997, 111 Stat. 1711.)

[1] Section 387(c) of the National Defense Authorization Act for Fiscal Year 1998 (P.L. 105–85; 111 Stat. 1713) provides:

(c) AUTHORITY TO PROCURE SERVICES FROM GOVERNMENT PRINTING OFFICE.—Consistent with section 501 of title 44, United States Code, the Secretary of a military department or head of a Defense Agency may contract directly with the Government Printing Office for printing and duplication services otherwise available through the Defense Automated Printing Service.

SUBCHAPTER II—MISCELLANEOUS DEFENSE AGENCY MATTERS [2]

Sec.
201. Certain intelligence officials: consultation and concurrence regarding appointments; evaluation of performance.
[202. Repealed.]
203. Director of Ballistic Missile Defense Organization.

§ 201. Certain intelligence officials: consultation and concurrence regarding appointments; evaluation of performance

(a) CONSULTATION REGARDING APPOINTMENT.—Before submitting a recommendation to the President regarding the appointment of an individual to the position of Director of the Defense Intelligence Agency, the Secretary of Defense shall consult with the Director of Central Intelligence regarding the recommendation.

(b) CONCURRENCE IN APPOINTMENT.—(1) Before submitting a recommendation to the President regarding the appointment of an individual to a position referred to in paragraph (2), the Secretary of Defense shall seek the concurrence of the Director of Central Intelligence in the recommendation. If the Director does not concur in the recommendation, the Secretary may make the recommendation to the President without the Director's concurrence, but shall include in the recommendation a statement that the Director does not concur in the recommendation.

(2) Paragraph (1) applies to the following positions:

(A) The Director of the National Security Agency.

(B) The Director of the National Reconnaissance Office.

(C) The Director of the National Imagery and Mapping Agency.

(c) PERFORMANCE EVALUATIONS.—(1) The Director of Central Intelligence shall provide annually to the Secretary of Defense, for the Secretary's consideration, an evaluation of the performance of the individuals holding the positions referred to in paragraph (2) in fulfilling their respective responsibilities with regard to the National Foreign Intelligence Program.

(2) The positions referred to in paragraph (1) are the following:

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[2] Section 923 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (P.L. 102–190, 105 Stat. 1453) provides:

SEC. 923. JOINT INTELLIGENCE CENTER.

(a) REQUIREMENT FOR CENTER.—The Secretary of Defense shall direct the consolidation of existing single-service current intelligence centers that are located within the District of Columbia or its vicinity into a joint intelligence center that is responsible for preparing current intelligence assessments (including indications and warning). The joint intelligence center shall be located within the District of Columbia or its vicinity. As appropriate for the support of military operations, the joint intelligence center shall provide for and manage the collection and analysis of intelligence.

(b) MANAGEMENT.—The center shall be managed by the Defense Intelligence Agency in its capacity as the intelligence staff activity of the Chairman of the Joint Chiefs of Staff.

(c) RESPONSIVENESS TO COMMAND AUTHORITIES.—The Secretary shall ensure that the center is fully responsive to the intelligence needs of the Secretary, the Chairman of the Joint Chiefs of Staff, and the commanders of the combatant commands.

(A) The Director of the National Security Agency.

(B) The Director of the National Reconnaissance Office.

(C) The Director of the National Imagery and Mapping Agency.

(Added P.L. 102–190, § 922(a)(2), Dec. 5, 1991, 105 Stat. 1453; amended P.L. 104–201, § 1103, Sept. 23, 1996, 110 Stat. 2676.)

[§ 202. Repealed. P.L. 105–107, § 503(c), Nov. 20, 1997, 111 Stat. 2262. Subsection (b) transferred to the end of § 425]

§ 203. Director of Ballistic Missile Defense Organization

If an officer of the armed forces on active duty is appointed to the position of Director of the Ballistic Missile Defense Organization, the position shall be treated as having been designated by the President as a position of importance and responsibility for purposes of section 601 of this title and shall carry the grade of lieutenant general or general or, in the case of an officer of the Navy, vice admiral or admiral.

(Added P.L. 105–85, § 235(a), Nov. 18, 1997, 111 Stat. 1665.)

CHAPTER 9—DEFENSE BUDGET MATTERS [1]

Sec.
221. Future-years defense program: submission to Congress; consistency in budgeting.
222. Future-years mission budget.
223. Ballistic missile defense programs: program elements.
224. Ballistic missile defense programs: display of amounts for procurement.
226. Scoring of outlays.
[227. Repealed.]
228. Monthly reports on allocation of funds within operation and maintenance budget subactivities.
229. Programs for combating terrorism: display of budget information.
230. Amounts for declassification of records.

§ 221. Future-years defense program: submission to Congress; consistency in budgeting

(a) The Secretary of Defense shall submit to Congress each year, at or about the time that the President's budget is submitted

[1] Section 8039 of the Department of Defense Appropriations Act, 2001 (P.L. 106–259; 114 Stat. 683), provides:

SEC. 8039. The President shall include with each budget for a fiscal year submitted to the Congress under section 1105 of title 31, United States Code, materials that shall identify clearly and separately the amounts requested in the budget for appropriation for that fiscal year for salaries and expenses related to administrative activities of the Department of Defense, the military departments, and the defense agencies.

Section 8091 of the Department of Defense Appropriations Act, 2000 (P.L. 106–79; 113 Stat. 1253), provides:

SEC. 8091. The budget of the President for fiscal year 2001 submitted to the Congress pursuant to section 1105 of title 31, United States Code, and each annual budget request thereafter, shall include budget activity groups (known as "subactivities") in all appropriations accounts provided in this Act, as may be necessary, to separately identify all costs incurred by the Department of Defense to support the North Atlantic Treaty Organization and all Partnership For Peace programs and initiatives. The budget justification materials submitted to the Congress in support of the budget of the Department of Defense for fiscal year 2001, and subsequent fiscal years, shall provide complete, detailed estimates for all such costs.

Section 8097 of the Department of Defense Appropriations Act, 2001 (P.L. 106–259; 114 Stat. 695), provides:

SEC. 8097. The budget of the President for fiscal year 2002 submitted to the Congress pursuant to section 1105 of title 31, United States Code, and each annual budget request thereafter, shall include separate budget justification documents for costs of United States Armed Forces' participation in contingency operations for the Military Personnel accounts, the Overseas Contingency Operations Transfer Fund, the Operation and Maintenance accounts, and the Procurement accounts: *Provided*, That these budget justification documents shall include a description of the funding requested for each anticipated contingency operation, for each military service, to include active duty and Guard and Reserve components, and for each appropriation account: *Provided further*, That these documents shall include estimated costs for each element of expense or object class, a reconciliation of increases and decreases for ongoing contingency operations, and programmatic data including, but not limited to troop strength for each active duty and Guard and Reserve component, and estimates of the major weapons systems deployed in support of each contingency: *Provided further*, That these documents shall include budget exhibits OP–5 and OP–32, as defined in the Department of Defense Financial Management Regulation, for the Overseas Contingency Operations Transfer Fund for fiscal years 2000 and 2001.

Section 8093 of the Department of Defense Appropriations Act, 1999 (P.L. 105–262; 112 Stat. 2319) provides:

SEC. 8093. At the time the President submits his budget for fiscal year 2000 and any fiscal year thereafter, the Department of Defense shall transmit to the congressional defense committees a budget justification document for the active and reserve Military Personnel accounts, to

Continued

to Congress that year under section 1105(a) of title 31, a future-years defense program (including associated annexes) reflecting the estimated expenditures and proposed appropriations included in that budget. Any such future-years defense program shall cover the fiscal year with respect to which the budget is submitted and at least the four succeeding fiscal years.

(b)(1) The Secretary of Defense shall ensure that amounts described in subparagraph (A) of paragraph (2) for any fiscal year are consistent with amounts described in subparagraph (B) of paragraph (2) for that fiscal year.

(2) Amounts referred to in paragraph (1) are the following:

(A) The amounts specified in program and budget information submitted to Congress by the Secretary in support of expenditure estimates and proposed appropriations in the budget submitted to Congress by the President under section 1105(a) of title 31 for any fiscal year, as shown in the future-years defense program submitted pursuant to subsection (a).

(B) The total amounts of estimated expenditures and proposed appropriations necessary to support the programs, projects, and activities of the Department of Defense included pursuant to paragraph (5) of section 1105(a) of title 31 in the budget submitted to Congress under that section for any fiscal year.

(c) Nothing in this section shall be construed to prohibit the inclusion in the future-years defense program of amounts for management contingencies, subject to the requirements of subsection (b).

(Added as § 114a P.L. 101–189, § 1602(a)(1), Nov. 29, 1989, Stat. 1596; amended P.L. 101–510, § 1402(a), Nov. 5, 1990, 104 Stat. 1674; transferred, redesignated § 221, and amended P.L. 102–484, § 1002(c), Oct. 23, 1992, 106 Stat. 2480.)

§ 222. Future-years mission budget

(a) FUTURE-YEARS MISSION BUDGET.—The Secretary of Defense shall submit to Congress for each fiscal year a future-years mission budget for the military programs of the Department of Defense. That budget shall be submitted for any fiscal year not later than 60 days after the date on which the President's budget for that fiscal year is submitted to Congress pursuant to section 1105 of title 31.

(b) CONSISTENCY WITH FUTURE-YEARS DEFENSE PROGRAM.—The future-years mission budget shall be consistent with the future-years defense program required under section 221 of this title. In the future-years mission budget, the military programs of the

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be known as the "M–1", which shall identify, at the budget activity, activity group, and subactivity group level, the amounts requested by the President to be appropriated to the Department of Defense for military personnel in any budget request, or amended budget request, for that fiscal year.

Section 327 of National Defense Authorization Act for Fiscal Year 1998 (P.L. 105–85; 111 Stat. 1679) provides:

SEC. 327. INCLUSION OF AIR FORCE DEPOT MAINTENANCE AS OPERATION AND MAINTENANCE BUDGET LINE ITEMS.

For fiscal year 1999 and each fiscal year thereafter, Air Force depot-level maintenance of materiel shall be displayed as one or more separate line items under each subactivity within the authorization request for operation and maintenance, Air Force, in the proposed budget for that fiscal year submitted to Congress pursuant to section 1105 of title 31, United States Code.

Department of Defense shall be organized on the basis of major roles, missions, or forces of the Department of Defense.

(c) RELATIONSHIP TO OTHER DEFENSE BUDGET FORMATS.—The requirement in subsection (a) is in addition to the requirements in any other provision of law regarding the format for the presentation regarding military programs of the Department of Defense in the budget submitted pursuant to section 1105 of title 31 for any fiscal year.

(Added P.L. 102–484, § 1002(a), Oct. 23, 1992, 106 Stat. 2480; amended P.L. 103–337, § 1004, Oct. 5, 1994, 108 Stat. 2834.)

§ 223. Ballistic missile defense programs: program elements [2]

(a) PROGRAM ELEMENTS SPECIFIED.—In the budget justification materials submitted to Congress in support of the Department of Defense budget for any fiscal year (as submitted with the budget of the President under section 1105(a) of title 31), the amount requested for activities of the Ballistic Missile Defense Organization shall be set forth in accordance with the following program elements:

(1) The Patriot system.
(2) The Navy Area system.
(3) The Theater High-Altitude Area Defense system.
(4) The Navy Theater Wide system.
(5) The Medium Extended Air Defense System.
(6) Joint Theater Missile Defense.
(7) National Missile Defense.
(8) Support Technologies.
(9) Family of Systems Engineering and Integration.
(10) Ballistic Missile Defense Technical Operations.
(11) Threat and Countermeasures.
(12) International Cooperative Programs.

(b) TREATMENT OF MAJOR DEFENSE ACQUISITION PROGRAMS.—Amounts requested for Theater Missile Defense and National Missile Defense major defense acquisition programs shall be specified in individual, dedicated program elements, and amounts appropriated for those programs shall be available only for Ballistic Missile Defense activities.

(c) MANAGEMENT AND SUPPORT.—The amount requested for each program element specified in subsection (a) shall include re-

[2] Section 233 of the National Defense Authorization Act for Fiscal Year 1998 (P.L. 105–85; 111 Stat. 1663) provides:

SEC. 233. COOPERATIVE BALLISTIC MISSILE DEFENSE PROGRAM.

(a) REQUIREMENT FOR NEW PROGRAM ELEMENT.—The Secretary of Defense shall establish a program element for the Ballistic Missile Defense Organization, to be referred to as the "Cooperative Ballistic Missile Defense Program", to support technical and analytical cooperative efforts between the United States and other nations that contribute to United States ballistic missile defense capabilities. Except as provided in subsection (b), all international cooperative ballistic missile defense programs of the Department of Defense shall be budgeted and administered through that program element.

(b) AUTHORITY FOR EXCEPTIONS.—The Secretary of Defense may exclude from the program element established pursuant to subsection (a) any international cooperative ballistic missile defense program of the Department of Defense that after [Nov. 18, 1997] is designated by the Secretary of Defense (pursuant to applicable Department of Defense acquisition regulations and policy) to be managed as a separate acquisition program.

(c) RELATIONSHIP TO OTHER PROGRAM ELEMENTS.—The program element established pursuant to subsection (a) is in addition to the program elements for activities of the Ballistic Missile Defense Organization required under section 251 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 233; 10 U.S.C. 221 note).

quests for the amounts necessary for the management and support of the programs, projects, and activities contained in that program element.

(Added P.L. 105–261, § 235(a)(1), Oct. 17, 1998, 106 Stat. 1953.)

§ 224. Ballistic missile defense programs: display of amounts for procurement

(a) REQUIREMENT.—Any amount in the budget submitted to Congress under section 1105 of title 31 for any fiscal year for procurement for a Department of Defense missile defense program described in subsection (b) shall be set forth under the account of the Department of Defense for Defense-wide procurement and, within that account, under the subaccount (or other budget activity level) for the Ballistic Missile Defense Organization.

(b) COVERED PROGRAMS.—Subsection (a) applies to the following missile defense programs of the Department of Defense:

(1) The National Missile Defense Program.

(2) Any system that is part of the core theater missile defense program.

(3) Any other ballistic missile defense program that enters production after the date of the enactment of this section and for which research, development, test, and evaluation was carried out by the Ballistic Missile Defense Organization.

(c) CORE THEATER BALLISTIC MISSILE DEFENSE PROGRAM.—For purposes of this section, the core theater missile defense program consists of the systems specified in section 234 of the Ballistic Missile Defense Act of 1995 (10 U.S.C. 2431 note).

(Added P.L. 105–85, § 232(a)(1), Nov. 18, 1997, 111 Stat. 1662.)

§ 226. Scoring of outlays

(a) ANNUAL OMB/CBO REPORT.—Not later than December 15 of each year, the Director of the Office of Management and Budget and the Director of the Congressional Budget Office shall submit to the Speaker of the House of Representatives and the Committees on Armed Services, Appropriations, and the Budget of the Senate a joint report containing an agreed resolution of all differences between—

(1) the technical assumptions to be used by the Office of Management and Budget in preparing estimates with respect to all accounts in major functional category 050 (National Defense) for the budget to be submitted to Congress in the following year pursuant to section 1105 of title 31; and

(2) the technical assumptions to be used by the Congressional Budget Office in preparing estimates with respect to those accounts for that budget.

(b) USE OF AVERAGES.—If the two Directors are unable to agree upon any technical assumption, the report shall reflect the average of the relevant outlay rates or assumptions used by the two offices.

(c) MATTERS TO BE INCLUDED.—The report with respect to a budget shall identify the following:

(1) The agreed first-year and outyear outlay rates for each account in budget function 050 (National Defense) for each fiscal year covered by the budget.

(2) The agreed amount of outlays estimated to occur from unexpended appropriations made for fiscal years before the fiscal year that begins after submission of the report.

(Added as § 221 P.L. 102–190, § 1002(a), Dec. 5, 1991, 105 Stat. 1455; redesignated § 226, P.L. 102–484, § 1002(a)(1), Oct. 23, 1992, 106 Stat. 2480; amended P.L. 103–160, § 1104, Nov. 30, 1993, 107 Stat. 1749.)

[§ 227. Repealed. P.L. 104–106, § 1061(f)(1), Feb. 10, 1996, 110 Stat. 443]

§ 228. Monthly reports on allocation of funds within operation and maintenance budget subactivities

(a) MONTHLY REPORT.—The Secretary of Defense shall submit to Congress a monthly report on the allocation of appropriations to O&M budget activities and to the subactivities of those budget activities. Each such report shall be submitted not later than 60 days after the end of the month to which the report pertains.

(b) MATTERS TO BE INCLUDED.—Each such report shall set forth the following for each subactivity of the O&M budget activities:

(1) The amount of budget authority appropriated for that subactivity in the most recent regular Department of Defense Appropriations Act.

(2) The amount of budget authority actually made available for that subactivity, taking into consideration supplemental appropriations, rescissions, and other adjustments required by law or made pursuant to law.

(3) The amount programmed to be expended from such subactivity.

(c) IDENTIFICATION OF CERTAIN FLUCTUATIONS.—(1) If, in the report under this section for a month of a fiscal year after the first month of that fiscal year, an amount shown under subsection (b) for a subactivity is different by more than $15,000,000 from the corresponding amount for that subactivity in the report for the first month of that fiscal year, the Secretary shall include in the report notice of that difference.

(2) If, in the report under this section for a month of a fiscal year after a month for which the report under this section includes a notice under paragraph (1), an amount shown under subsection (b) for a subactivity is different by more than $15,000,000 from the corresponding amount for that subactivity in the most recent report that includes a notice under paragraph (1) or this paragraph, the Secretary shall include in the report notice of that difference.

(d) REPORT ON FLUCTUATIONS.—If a report under this section includes a notice under subsection (c), the Secretary shall include in the report with each such notice the following:

(1) The reasons for the reallocations of funds resulting in the inclusion of that notice in the report.

(2) Each budget subactivity involved in those reallocations.

(3) The effect of those reallocations on the operation and maintenance activities funded through the subactivity with respect to which the notice is included in the report.

(e) O&M BUDGET ACTIVITY DEFINED.—For purposes of this section, the term "O&M budget activity" means a budget activity

within an operation and maintenance appropriation of the Department of Defense for a fiscal year.

(Added P.L. 105–85, § 321(a)(1), Nov. 18, 1997, 111 Stat. 1672.)

§ 229. Programs for combating terrorism: display of budget information

(a) SUBMISSION WITH ANNUAL BUDGET JUSTIFICATION DOCUMENTS.—The Secretary of Defense shall submit to Congress, as a part of the documentation that supports the President's annual budget for the Department of Defense, a consolidated budget justification display, in classified and unclassified form, that includes all programs and activities of the Department of Defense combating terrorism program.

(b) REQUIREMENTS FOR BUDGET DISPLAY.—The budget display under subsection (a) shall include—

(1) the amount requested, by appropriation and functional area, for each of the program elements, projects, and initiatives that support the Department of Defense combating terrorism program, with supporting narrative descriptions and rationale for the funding levels requested; and

(2) a summary, to the program element and project level of detail, of estimated expenditures for the current year, funds requested for the budget year, and budget estimates through the completion of the current future-years defense plan for the Department of Defense combating terrorism program.

(c) EXPLANATION OF INCONSISTENCIES.—As part of the budget display under subsection (a) for any fiscal year, the Secretary shall identify and explain—

(1) any inconsistencies between (A) the information submitted under subsection (b) for that fiscal year, and (B) the information provided to the Director of the Office of Management and Budget in support of the annual report of the President to Congress on funding for executive branch counterterrorism and antiterrorism programs and activities for that fiscal year in accordance with section 1051(b) of the National Defense Authorization Act for Fiscal Year 1998 (31 U.S.C. 1113 note); and

(2) any inconsistencies between (A) the execution, during the previous fiscal year and the current fiscal year, of programs and activities of the Department of Defense combating terrorism program, and (B) the funding and specification for such programs and activities for those fiscal years in the manner provided by Congress (both in statutes and in relevant legislative history).

(d) SEMIANNUAL REPORTS ON OBLIGATIONS AND EXPENDITURES.—The Secretary shall submit to the congressional defense committees a semiannual report on the obligation and expenditure of funds for the Department of Defense combating terrorism program. Such reports shall be submitted not later than April 15 each year, with respect to the first half of a fiscal year, and not later than November 15 each year, with respect to the second half of a fiscal year. Each such report shall compare the amounts of those obligations and expenditures to the amounts authorized and appropriated for the Department of Defense combating terrorism pro-

gram for that fiscal year, by budget activity, sub-budget activity, and program element or line item. The second report for a fiscal year shall show such information for the second half of the fiscal year and cumulatively for the whole fiscal year. The report shall be submitted in unclassified form, but may have a classified annex.

(e) DEPARTMENT OF DEFENSE COMBATING TERRORISM PROGRAM.—In this section, the term "Department of Defense combating terrorism program" means the programs, projects, and activities of the Department of Defense related to combating terrorism inside and outside the United States.

(f) CONGRESSIONAL DEFENSE COMMITTEES DEFINED.—In this section, 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.

(Added P.L. 106–65, § 932(b)(1), Oct. 5, 1999, 113 Stat. 727.)

§ 230. Amounts for declassification of records

The Secretary of Defense shall include in the budget justification materials submitted to Congress in support of the Department of Defense budget for any fiscal year (as submitted with the budget of the President under section 1105(a) of title 31) specific identification of the amounts required to carry out programmed activities during that fiscal year to declassify records pursuant to Executive Order No. 12958 (50 U.S.C. 435 note) or any successor Executive order or to comply with any statutory requirement, or any request, to declassify Government records. Identification of such amounts in such budget justification materials shall be in a single display that shows the total amount for the Department of Defense and the amount for each military department and Defense Agency.

(Added P.L. 106–65, § 1041(a)(1), Oct. 5, 1999, 113 Stat. 758; P.L. 106–398, § 1[1075(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–280.)

CHAPTER 11—RESERVE COMPONENTS [1]

Sec.
261. Reference to chapters 1003, 1005, and 1007.
[262 to 265. Repealed.]
[266. Transferred.]
[267 to 281. Repealed.]

§ 261. Reference to chapters 1003, 1005, and 1007

Provisions of law relating to the reserve components generally, including provisions relating to the organization and administration of the reserve components, are set forth in chapter 1003 (beginning with section 10101), chapter 1005 (beginning with section 10141), and chapter 1007 (beginning with section 10201) of this title.

(Added P.L. 103–337, § 1661(a)(2)(B), Oct. 5, 1994, 108 Stat. 2979.)

[1] For disposition of former provisions of this chapter see table in material preceding section 101.

CHAPTER 13—THE MILITIA

Sec.
311. Militia: composition and classes.
312. Militia duty: exemptions.

§ 311. Militia: composition and classes

(a) The militia of the United States consists of all able-bodied males at least 17 years of age and, except as provided in section 313 of title 32, under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States and of female citizens of the United States who are members of the National Guard.

(b) The classes of the militia are—

(1) the organized militia, which consists of the National Guard and the Naval Militia; and

(2) the unorganized militia, which consists of the members of the militia who are not members of the National Guard or the Naval Militia.

(Aug. 10, 1956, ch. 1041, 70A Stat. 14; Sept. 2, 1958, P.L. 85–861, § 1(7), 72 Stat. 1439; Nov. 30, 1993, P.L. 103–160, § 524(a), 107 Stat. 1656.)

§ 312. Militia duty: exemptions

(a) The following persons are exempt from militia duty:

(1) The Vice President.

(2) The judicial and executive officers of the United States, the several States and Territories, and Puerto Rico.

(3) Members of the armed forces, except members who are not on active duty.

(4) Customhouse clerks.

(5) Persons employed by the United States in the transmission of mail.

(6) Workmen employed in armories, arsenals, and naval shipyards of the United States.

(7) Pilots on navigable waters.

(8) Mariners in the sea service of a citizen of, or a merchant in, the United States.

(b) A person who claims exemption because of religious belief is exempt from militia duty in a combatant capacity, if the conscientious holding of that belief is established under such regulations as the President may prescribe. However, such a person is not exempt from militia duty that the President determines to be noncombatant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 15; Sept. 29, 1988, P.L. 100–456, § 1234(a), 102 Stat. 2059.)

CHAPTER 15—INSURRECTION

Sec.
331. Federal aid for State governments.
332. Use of militia and armed forces to enforce Federal authority.
333. Interference with State and Federal law.
334. Proclamation to disperse.
335. Guam and Virgin Islands included as "State".
[336. Repealed.]

§ 331. Federal aid for State governments

Whenever there is an insurrection in any State against its government, the President may, upon the request of its legislature or of its governor if the legislature cannot be convened, call into Federal service such of the militia of the other States, in the number requested by that State, and use such of the armed forces, as he considers necessary to suppress the insurrection.

(Aug. 10, 1956, ch. 1041, 70A Stat. 15.)

§ 332. Use of militia and armed forces to enforce Federal authority

Whenever the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State or Territory by the ordinary course of judicial proceedings, he may call into Federal service such of the militia of any State, and use such of the armed forces, as he considers necessary to enforce those laws or to suppress the rebellion.

(Aug. 10, 1956, ch. 1041, 70A Stat. 15.)

§ 333. Interference with State and Federal law

The President, by using the militia or the armed forces, or both, or by any other means, shall take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it—

(1) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or

(2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.

In any situation covered by clause (1), the State shall be considered to have denied the equal protection of the laws secured by the Constitution.

(Aug. 10, 1956, ch. 1041, 70A Stat. 15.)

§ 334. Proclamation to disperse

Whenever the President considers it necessary to use the militia or the armed forces under this chapter, he shall, by proclamation, immediately order the insurgents to disperse and retire peaceably to their abodes within a limited time.

(Aug. 10, 1956, ch. 1041, 70A Stat. 16.)

§ 335. Guam and Virgin Islands included as "State"

For purposes of this chapter, the term "State" includes the unincorporated territories of Guam and the Virgin Islands.

(Added P.L. 90–497, § 11, Sept. 11, 1968, 82 Stat. 847; amended P.L. 96–513, § 511(11)(A), Dec. 12, 1980, 94 Stat. 2920.)

[§ 336. Repealed. P.L. 96–513, § 511(11)(B), Dec. 12, 1980, 94 Stat. 2921]

CHAPTER 17—ARMING OF AMERICAN VESSELS

Sec.
351. During war or threat to national security.

§ 351. During war or threat to national security

(a) The President, through any agency of the Department of Defense designated by him, may arm, have armed, or allow to be armed, any watercraft or aircraft that is capable of being used as a means of transportation on, over, or under water, and is documented, registered, or licensed under the laws of the United States.

(b) This section applies during a war and at any other time when the President determines that the security of the United States is threatened by the application, or the imminent danger of application, of physical force by any foreign government or agency against the United States, its citizens, the property of its citizens, or their commercial interests.

(c) Section 16 of the Act of March 4, 1909 (22 U.S.C. 463) does not apply to vessels armed under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 16; Dec. 12, 1980, P.L. 96–513, § 511(12), 94 Stat. 2921.)

CHAPTER 18—MILITARY SUPPORT FOR CIVILIAN LAW ENFORCEMENT AGENCIES [1]

Sec.
371. Use of information collected during military operations.
372. Use of military equipment and facilities.
373. Training and advising civilian law enforcement officials.
374. Maintenance and operation of equipment.
375. Restriction on direct participation by military personnel.
376. Support not to affect adversely military preparedness.
377. Reimbursement.
378. Nonpreemption of other law.
379. Assignment of Coast Guard personnel to naval vessels for law enforcement purposes.
380. Enhancement of cooperation with civilian law enforcement officials.
381. Procurement by State and local governments of law enforcement equipment suitable for counter-drug activities through the Department of Defense.
382. Emergency situations involving chemical or biological weapons of mass destruction.

§ 371. Use of information collected during military operations

(a) The Secretary of Defense may in accordance with other applicable law, provide to Federal, State, or local civilian law enforcement officials any information collected during the normal course of military training or operations that may be relevant to a violation of any Federal or State law within the jurisdiction of such officials.

(b) The needs of civilian law enforcement officials for information shall, to the maximum extent practicable, be taken into account in the planning and execution of military training or operations.

(c) The Secretary of Defense shall ensure, to the extent consistent with national security, that intelligence information held by the Department of Defense and relevant to drug interdiction or other civilian law enforcement matters is provided promptly to appropriate civilian law enforcement officials.

(Added P.L. 97–86, § 905(a)(1), Dec. 1, 1981, 95 Stat. 1115; amended P.L. 100–456, § 1104(a), Sept. 29, 1988, 102 Stat. 2043; P.L. 101–189, § 1216(a), Nov. 29, 1989, 103 Stat. 1569.)

§ 372. Use of military equipment and facilities

(a) IN GENERAL.—The Secretary of Defense may, in accordance with other applicable law, make available any equipment (including associated supplies or spare parts), base facility, or research

[1] Section 1385 of title 18, United States Code (popularly known as the "Posse Comitatus Act") provides:

§ 1385. Use of Army and Air Force as posse comitatus

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.

facility of the Department of Defense to any Federal, State, or local civilian law enforcement official for law enforcement purposes.

(b) EMERGENCIES INVOLVING CHEMICAL AND BIOLOGICAL AGENTS.—(1) In addition to equipment and facilities described in subsection (a), the Secretary may provide an item referred to in paragraph (2) to a Federal, State, or local law enforcement or emergency response agency to prepare for or respond to an emergency involving chemical or biological agents if the Secretary determines that the item is not reasonably available from another source. The requirement for a determination that an item is not reasonably available from another source does not apply to assistance provided under section 382 of this title pursuant to a request of the Attorney General for the assistance.

(2) An item referred to in paragraph (1) is any material or expertise of the Department of Defense appropriate for use in preparing for or responding to an emergency involving chemical or biological agents, including the following:

(A) Training facilities.

(B) Sensors.

(C) Protective clothing.

(D) Antidotes.

(Added P.L. 97–86, § 905(a)(1), Dec. 1, 1981, 95 Stat. 1115; amended P.L. 100–456, § 1104(a), Sept. 29, 1988, 102 Stat. 2043; P.L. 104–106, § 378, Feb. 10, 1996, 110 Stat. 284; P.L. 104–201, § 1416(b), Sept. 23, 1996, 110 Stat. 2723.)

§ 373. Training and advising civilian law enforcement officials

The Secretary of Defense may, in accordance with other applicable law, make Department of Defense personnel available—

(1) to train Federal, State, and local civilian law enforcement officials in the operation and maintenance of equipment, including equipment made available under section 372 of this title; and

(2) to provide such law enforcement officials with expert advice relevant to the purposes of this chapter.

(Added P.L. 97–86, § 905(a)(1), Dec. 1, 1981, 95 Stat. 1115; amended P.L. 99–145, § 1423(a), Nov. 8, 1985, 99 Stat. 752; P.L. 100–456, § 1104(a), Sept. 29, 1988, 102 Stat. 2043.)

§ 374. Maintenance and operation of equipment [2]

(a) The Secretary of Defense may, in accordance with other applicable law, make Department of Defense personnel available for the maintenance of equipment for Federal, State, and local civilian law enforcement officials, including equipment made available under section 372 of this title.

(b)(1) Subject to paragraph (2) and in accordance with other applicable law, the Secretary of Defense may, upon request from the head of a Federal law enforcement agency, make Department of Defense personnel available to operate equipment (including equipment made available under section 372 of this title) with respect to—

[2] Section 8062(a) of the Department of Defense Appropriations Act, 2001 (P.L. 106–259; 114 Stat. 688), provides:

SEC. 8062. (a) None of the funds available to the Department of Defense for any fiscal year for drug interdiction or counter-drug activities may be transferred to any other department or agency of the United States except as specifically provided in an appropriations law.

(A) a criminal violation of a provision of law specified in paragraph (4)(A);

(B) assistance that such agency is authorized to furnish to a State, local, or foreign government which is involved in the enforcement of similar laws;

(C) a foreign or domestic counter-terrorism operation; or

(D) a rendition of a suspected terrorist from a foreign country to the United States to stand trial.

(2) Department of Defense personnel made available to a civilian law enforcement agency under this subsection may operate equipment for the following purposes:

(A) Detection, monitoring, and communication of the movement of air and sea traffic.

(B) Detection, monitoring, and communication of the movement of surface traffic outside of the geographic boundary of the United States and within the United States not to exceed 25 miles of the boundary if the initial detection occurred outside of the boundary.

(C) Aerial reconnaissance.

(D) Interception of vessels or aircraft detected outside the land area of the United States for the purposes of communicating with such vessels and aircraft to direct such vessels and aircraft to go to a location designated by appropriate civilian officials.

(E) Operation of equipment to facilitate communications in connection with law enforcement programs specified in paragraph (4)(A).

(F) Subject to joint approval by the Secretary of Defense and the Attorney General (and the Secretary of State in the case of a law enforcement operation outside of the land area of the United States)—

(i) the transportation of civilian law enforcement personnel along with any other civilian or military personnel who are supporting, or conducting, a joint operation with civilian law enforcement personnel;

(ii) the operation of a base of operations for civilian law enforcement and supporting personnel; and

(iii) the transportation of suspected terrorists from foreign countries to the United States for trial (so long as the requesting Federal law enforcement agency provides all security for such transportation and maintains custody over the suspect through the duration of the transportation).

(3) Department of Defense personnel made available to operate equipment for the purpose stated in paragraph (2)(D) may continue to operate such equipment into the land area of the United States in cases involving the pursuit of vessels or aircraft where the detection began outside such land area.

(4) In this subsection:

(A) The term "Federal law enforcement agency" means a Federal agency with jurisdiction to enforce any of the following:

(i) The Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.).

(ii) Any of sections 274 through 278 of the Immigration and Nationality Act (8 U.S.C. 1324–1328).

(iii) A law relating to the arrival or departure of merchandise (as defined in section 401 of the Tariff Act of 1930 (19 U.S.C. 1401) into or out of the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedules of the United States) or any other territory or possession of the United States.

(iv) The Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.).

(v) Any law, foreign or domestic, prohibiting terrorist activities.

(B) The term "land area of the United States" includes the land area of any territory, commonwealth, or possession of the United States.

(c) The Secretary of Defense may, in accordance with other applicable law, make Department of Defense personnel available to any Federal, State, or local civilian law enforcement agency to operate equipment for purposes other than described in subsection (b)(2) only to the extent that such support does not involve direct participation by such personnel in a civilian law enforcement operation unless such direct participation is otherwise authorized by law.

(Added P.L. 97–86, § 905(a)(1), Dec. 1, 1981, 95 Stat. 1115; amended P.L. 98–525, § 1405(9), Oct. 19, 1984, 98 Stat. 2622; P.L. 99–570, § 3056, Oct. 27, 1986, 100 Stat. 3207–77; P.L. 99–661, § 1373(c), Nov. 14, 1986, 100 Stat. 4007; P.L. 100–456, § 1104(a), Sept. 29, 1988, 102 Stat. 2043; P.L. 101–189, §§ 1210, 1216 (b), (c), Nov. 29, 1989, 103 Stat. 1566, 1569; P.L. 102–484, § 1042, Oct. 23, 1992, 106 Stat. 2492; P.L. 105–277, § 201 [div. B], Oct. 21, 1998, 112 Stat. 2681–567; P.L. 106–65, § 1066(a)(4), Oct. 5, 1999, 113 Stat. 770.)

§ 375. Restriction on direct participation by military personnel

The Secretary of Defense shall prescribe such regulations as may be necessary to ensure that any activity (including the provision of any equipment or facility or the assignment or detail of any personnel) under this chapter does not include or permit direct participation by a member of the Army, Navy, Air Force, or Marine Corps in a search, seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law.

(Added P.L. 97–86, § 905(a)(1), Dec. 1, 1981, 95 Stat. 1116; amended P.L. 100–456, § 1104(a), Sept. 29, 1988, 102 Stat. 2045; P.L. 101–189, § 1211(1)–(3), Nov. 29, 1989, 103 Stat. 1567.)

§ 376. Support not to affect adversely military preparedness

Support (including the provision of any equipment or facility or the assignment or detail of any personnel) may not be provided to any civilian law enforcement official under this chapter if the provision of such support will adversely affect the military preparedness

of the United States. The Secretary of Defense shall prescribe such regulations as may be necessary to ensure that the provision of any such support does not adversely affect the military preparedness of the United States.

(Added P.L. 97–86, § 905(a)(1), Dec. 1, 1981, 95 Stat. 1116; amended P.L. 100–456, § 1104(a), Sept. 29, 1988, 102 Stat. 2045.)

§ 377. Reimbursement

(a) To the extent otherwise required by section 1535 of title 31 (popularly known as the "Economy Act") or other applicable law, the Secretary of Defense shall require a civilian law enforcement agency to which support is provided under this chapter to reimburse the Department of Defense for that support.

(b) An agency to which support is provided under this chapter is not required to reimburse the Department of Defense for such support if such support—

(1) is provided in the normal course of military training or operations; or

(2) results in a benefit to the element of the Department of Defense providing the support that is substantially equivalent to that which would otherwise be obtained from military operations or training.

(Added P.L. 97–86, § 905(a)(1), Dec. 1, 1981, 95 Stat. 1116; amended P.L. 100–456, § 1104(a), Sept. 29, 1988, 102 Stat. 2045.)

§ 378. Nonpreemption of other law

Nothing in this chapter shall be construed to limit the authority of the executive branch in the use of military personnel or equipment for civilian law enforcement purposes beyond that provided by law before December 1, 1981.

(Added P.L. 97–86, § 905(a)(1), Dec. 1, 1981, 95 Stat. 1116; amended P.L. 98–525, § 1405(10), Oct. 19, 1984, 98 Stat. 2622; P.L. 100–456, § 1104(a), Sept. 29, 1988, 102 Stat. 2045.)

§ 379. Assignment of Coast Guard personnel to naval vessels for law enforcement purposes

(a) The Secretary of Defense and the Secretary of Transportation shall provide that there be assigned on board every appropriate surface naval vessel at sea in a drug-interdiction area members of the Coast Guard who are trained in law enforcement and have powers of the Coast Guard under title 14, including the power to make arrests and to carry out searches and seizures.

(b) Members of the Coast Guard assigned to duty on board naval vessels under this section shall perform such law enforcement functions (including drug-interdiction functions)—

(1) as may be agreed upon by the Secretary of Defense and the Secretary of Transportation; and

(2) as are otherwise within the jurisdiction of the Coast Guard.

(c) No fewer than 500 active duty personnel of the Coast Guard shall be assigned each fiscal year to duty under this section. However, if at any time the Secretary of Transportation, after consultation with the Secretary of Defense, determines that there are insufficient naval vessels available for purposes of this section, such per-

sonnel may be assigned other duty involving enforcement of laws listed in section 374(b)(4)(A) of this title.

(d) In this section, the term "drug-interdiction area" means an area outside the land area of the United States (as defined in section 374(b)(4)(B) of this title) in which the Secretary of Defense (in consultation with the Attorney General) determines that activities involving smuggling of drugs into the United States are ongoing.

(Added P.L. 99–570, § 3053(b)(1), Oct. 27, 1986, 100 Stat. 3207–77; amended P.L. 100–456, § 1104(a), Sept. 29, 1988, 102 Stat. 2045.)

§ 380. Enhancement of cooperation with civilian law enforcement officials

(a) The Secretary of Defense, in cooperation with the Attorney General, shall conduct an annual briefing of law enforcement personnel of each State (including law enforcement personnel of the political subdivisions of each State) regarding information, training, technical support, and equipment and facilities available to civilian law enforcement personnel from the Department of Defense.

(b) Each briefing conducted under subsection (a) shall include the following:

(1) An explanation of the procedures for civilian law enforcement officials—

(A) to obtain information, equipment, training, expert advice, and other personnel support under this chapter; and

(B) to obtain surplus military equipment.

(2) A description of the types of information, equipment and facilities, and training and advice available to civilian law enforcement officials from the Department of Defense.

(3) A current, comprehensive list of military equipment which is suitable for law enforcement officials from the Department of Defense or available as surplus property from the Administrator of General Services.

(c) The Attorney General and the Administrator of General Services shall—

(1) establish or designate an appropriate office or offices to maintain the list described in subsection (b)(3) and to furnish information to civilian law enforcement officials on the availability of surplus military equipment; and

(2) make available to civilian law enforcement personnel nationwide, tollfree telephone communication with such office or offices.

(Added P.L. 100–180, § 1243(a), Dec. 4, 1987, 101 Stat. 1163; amended P.L. 100–456, § 1104(a), Sept. 29, 1988, 102 Stat. 2046.)

§ 381. Procurement by State and local governments of law enforcement equipment suitable for counter-drug activities through the Department of Defense

(a) PROCEDURES.—(1) The Secretary of Defense shall establish procedures in accordance with this subsection under which States and units of local government may purchase law enforcement equipment suitable for counter-drug activities through the Department of Defense. The procedures shall require the following:

(A) Each State desiring to participate in a procurement of equipment suitable for counter-drug activities through the Department of Defense shall submit to the Department, in such form and manner and at such times as the Secretary prescribes, the following:

(i) A request for law enforcement equipment.

(ii) Advance payment for such equipment, in an amount determined by the Secretary based on estimated or actual costs of the equipment and administrative costs incurred by the Department.

(B) A State may include in a request submitted under subparagraph (A) only the type of equipment listed in the catalog produced under subsection (c).

(C) A request for law enforcement equipment shall consist of an enumeration of the law enforcement equipment that is desired by the State and units of local government within the State. The Governor of a State may establish such procedures as the Governor considers appropriate for administering and coordinating requests for law enforcement equipment from units of local government within the State.

(D) A State requesting law enforcement equipment shall be responsible for arranging and paying for shipment of the equipment to the State and localities within the State.

(2) In establishing the procedures, the Secretary of Defense shall coordinate with the General Services Administration and other Federal agencies for purposes of avoiding duplication of effort.

(b) REIMBURSEMENT OF ADMINISTRATIVE COSTS.—In the case of any purchase made by a State or unit of local government under the procedures established under subsection (a), the Secretary of Defense shall require the State or unit of local government to reimburse the Department of Defense for the administrative costs to the Department of such purchase.

(c) GSA CATALOG.—The Administrator of General Services, in coordination with the Secretary of Defense, shall produce and maintain a catalog of law enforcement equipment suitable for counter-drug activities for purchase by States and units of local government under the procedures established by the Secretary under this section.

(d) DEFINITIONS.—In this section:

(1) 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) The term "unit of local government" means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State; an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior; or any agency of the District of Columbia government or the United States Government performing law enforcement functions in and for the District of Columbia or the Trust Territory of the Pacific Islands.

(3) The term "law enforcement equipment suitable for counter-drug activities" has the meaning given such term in

regulations prescribed by the Secretary of Defense. In prescribing the meaning of the term, the Secretary may not include any equipment that the Department of Defense does not procure for its own purposes.

(Added P.L. 103–160, § 1122(a), Nov. 30, 1993, 107 Stat. 1754.)

§ 382. Emergency situations involving chemical or biological weapons of mass destruction

(a) IN GENERAL.—The Secretary of Defense, upon the request of the Attorney General, may provide assistance in support of Department of Justice activities relating to the enforcement of section 175 or 2332c of title 18 during an emergency situation involving a biological or chemical weapon of mass destruction. Department of Defense resources, including personnel of the Department of Defense, may be used to provide such assistance if—

(1) the Secretary of Defense and the Attorney General jointly determine that an emergency situation exists; and

(2) the Secretary of Defense determines that the provision of such assistance will not adversely affect the military preparedness of the United States.

(b) EMERGENCY SITUATIONS COVERED.—In this section, the term "emergency situation involving a biological or chemical weapon of mass destruction" means a circumstance involving a biological or chemical weapon of mass destruction—

(1) that poses a serious threat to the interests of the United States; and

(2) in which—

(A) civilian expertise and capabilities are not readily available to provide the required assistance to counter the threat immediately posed by the weapon involved;

(B) special capabilities and expertise of the Department of Defense are necessary and critical to counter the threat posed by the weapon involved; and

(C) enforcement of section 175 or 2332c of title 18 would be seriously impaired if the Department of Defense assistance were not provided.

(c) FORMS OF ASSISTANCE.—The assistance referred to in subsection (a) includes the operation of equipment (including equipment made available under section 372 of this title) to monitor, contain, disable, or dispose of the weapon involved or elements of the weapon.

(d) REGULATIONS.—(1) The Secretary of Defense and the Attorney General shall jointly prescribe regulations concerning the types of assistance that may be provided under this section. Such regulations shall also describe the actions that Department of Defense personnel may take in circumstances incident to the provision of assistance under this section.

(2)(A) Except as provided in subparagraph (B), the regulations may not authorize the following actions:

(i) Arrest.

(ii) Any direct participation in conducting a search for or seizure of evidence related to a violation of section 175 or 2332c of title 18.

(iii) Any direct participation in the collection of intelligence for law enforcement purposes.

(B) The regulations may authorize an action described in subparagraph (A) to be taken under the following conditions:

(i) The action is considered necessary for the immediate protection of human life, and civilian law enforcement officials are not capable of taking the action.

(ii) The action is otherwise authorized under subsection (c) or under otherwise applicable law.

(e) REIMBURSEMENTS.—The Secretary of Defense shall require reimbursement as a condition for providing assistance under this section to the extent required under section 377 of this title.

(f) DELEGATIONS OF AUTHORITY.—(1) Except to the extent otherwise provided by the Secretary of Defense, the Deputy Secretary of Defense may exercise the authority of the Secretary of Defense under this section. The Secretary of Defense may delegate the Secretary's authority under this section only to an Under Secretary of Defense or an Assistant Secretary of Defense and only if the Under Secretary or Assistant Secretary to whom delegated has been designated by the Secretary to act for, and to exercise the general powers of, the Secretary.

(2) Except to the extent otherwise provided by the Attorney General, the Deputy Attorney General may exercise the authority of the Attorney General under this section. The Attorney General may delegate that authority only to the Associate Attorney General or an Assistant Attorney General and only if the Associate Attorney General or Assistant Attorney General to whom delegated has been designated by the Attorney General to act for, and to exercise the general powers of, the Attorney General.

(g) RELATIONSHIP TO OTHER AUTHORITY.—Nothing in this section shall be construed to restrict any executive branch authority regarding use of members of the armed forces or equipment of the Department of Defense that was in effect before September 23, 1996.

(Added P.L. 104–201, § 1416(a), Sept. 23, 1996, 110 Stat. 2721; amended P.L. 105–85, § 1073(a)(6), Nov. 18, 1997, 111 Stat. 1900.)

CHAPTER 20—HUMANITARIAN AND OTHER ASSISTANCE

Sec.
401. Humanitarian and civic assistance provided in conjunction with military operations.
402. Transportation of humanitarian relief supplies to foreign countries.
[403. Repealed.]
404. Foreign disaster assistance.
405. Use of Department of Defense funds for United States share of costs of United Nations peacekeeping activities: limitation.
[410. Repealed.]

§ 401. Humanitarian and civic assistance provided in conjunction with military operations [1]

(a)(1) Under regulations prescribed by the Secretary of Defense, the Secretary of a military department may carry out humanitarian and civic assistance activities in conjunction with authorized military operations of the armed forces in a country if the Secretary concerned determines that the activities will promote—

(A) the security interests of both the United States and the country in which the activities are to be carried out; and

(B) the specific operational readiness skills of the members of the armed forces who participate in the activities.

(2) Humanitarian and civic assistance activities carried out under this chapter shall complement, and may not duplicate, any other form of social or economic assistance which may be provided to the country concerned by any other department or agency of the United States. Such activities shall serve the basic economic and social needs of the people of the country concerned.

(3) Humanitarian and civic assistance may not be provided under this chapter (directly or indirectly) to any individual, group, or organization engaged in military or paramilitary activity.

(4) The Secretary of Defense shall ensure that no member of the armed forces, while providing assistance under this section that is described in subsection (e)(5)—

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[1] Section 8009 of the Department of Defense Appropriations Act, 2001 (P.L. 106–259; 114 Stat. 676), provides:

SEC. 8009. Within the funds appropriated for the operation and maintenance of the Armed Forces, funds are hereby appropriated pursuant to section 401 of title 10, United States Code, for humanitarian and civic assistance costs under chapter 20 of title 10, United States Code. Such funds may also be obligated for humanitarian and civic assistance costs incidental to authorized operations and pursuant to authority granted in section 401 of chapter 20 of title 10, United States Code, and these obligations shall be reported to the Congress on September 30 of each year: *Provided*, That funds available for operation and maintenance shall be available for providing humanitarian and similar assistance by using Civic Action Teams in the Trust Territories of the Pacific Islands and freely associated states of Micronesia, pursuant to the Compact of Free Association as authorized by Public Law 99–239: *Provided further*, That upon a determination by the Secretary of the Army that such action is beneficial for graduate medical education programs conducted at Army medical facilities located in Hawaii, the Secretary of the Army may authorize the provision of medical services at such facilities and transportation to such facilities, on a nonreimbursable basis, for civilian patients from American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, Palau, and Guam.

(A) engages in the physical detection, lifting, or destroying of landmines (unless the member does so for the concurrent purpose of supporting a United States military operation); or

(B) provides such assistance as part of a military operation that does not involve the armed forces.

(b)(1) Humanitarian and civic assistance may not be provided under this section to any foreign country unless the Secretary of State specifically approves the provision of such assistance.

(2) Any authority provided under any other provision of law to provide assistance that is described in subsection (e)(5) to a foreign country shall be carried out in accordance with, and subject to, the limitations prescribed in this section. Any such provision may be construed as superseding a provision of this section only if, and to the extent that, such provision specifically refers to this section and specifically identifies the provision of this section that is to be considered superseded or otherwise inapplicable under such provision.

(c)(1) Expenses incurred as a direct result of providing humanitarian and civic assistance under this section to a foreign country shall be paid for out of funds specifically appropriated for such purpose.

(2) Expenses covered by paragraph (1) include the following expenses incurred in providing assistance described in subsection (e)(5):

(A) Travel, transportation, and subsistence expenses of Department of Defense personnel providing such assistance.

(B) The cost of any equipment, services, or supplies acquired for the purpose of carrying out or supporting the activities described in subsection (e)(5), including any nonlethal, individual, or small-team landmine clearing equipment or supplies that are to be transferred or otherwise furnished to a foreign country in furtherance of the provision of assistance under this section.

(3) The cost of equipment, services, and supplies provided in any fiscal year under paragraph (2)(B) may not exceed $5,000,000.

(4) Nothing in this section may be interpreted to preclude the incurring of minimal expenditures by the Department of Defense for purposes of humanitarian and civic assistance out of funds other than funds appropriated pursuant to paragraph (1), except that funds appropriated to the Department of Defense for operation and maintenance (other than funds appropriated pursuant to such paragraph) may be obligated for humanitarian and civic assistance under this section only for incidental costs of carrying out such assistance.

(d) The Secretary of Defense shall submit to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on International Relations of the House of Representatives a report, not later than March 1 of each year, on activities carried out under this section during the preceding fiscal year. The Secretary shall include in each such report—

(1) a list of the countries in which humanitarian and civic assistance activities were carried out during the preceding fiscal year;

(2) the type and description of such activities carried out in each country during the preceding fiscal year; and

(3) the amount expended in carrying out each such activity in each such country during the preceding fiscal year.

(e) In this section, the term "humanitarian and civic assistance" means any of the following:

(1) Medical, dental, and veterinary care provided in areas of a country that are rural or are underserved by medical, dental, and veterinary professionals, respectively.

(2) Construction of rudimentary surface transportation systems.

(3) Well drilling and construction of basic sanitation facilities.

(4) Rudimentary construction and repair of public facilities.

(5) Detection and clearance of landmines, including activities relating to the furnishing of education, training, and technical assistance with respect to the detection and clearance of landmines.

(Added P.L. 99–661, § 333(a)(1), Nov. 14, 1986, 100 Stat. 3857–3859; amended P.L. 100–180, § 332(b), Dec. 4, 1987, 101 Stat. 1080; P.L. 100–456, § 1233(g)(1), Sept. 29, 1988, 102 Stat. 2058; P.L. 103–160, § 1182(a)(1), 1504(b), Nov. 30, 1993, 107 Stat. 1771, 1839; P.L. 104–106, § 1313(a)–(b), 1502(a)(8), Feb. 10, 1996, 110 Stat. 474, 475, 503; P.L. 104–201, §§ 1074(a)(2), 1304, Sept. 23, 1996, 110 Stat. 2656, 2704–5; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774; P.L. 106–398, § 1[1235], Oct. 30, 2000, 114 Stat. 1654, 1654A–331.)

§ 402. Transportation of humanitarian relief supplies to foreign countries

(a) Notwithstanding any other provision of law, and subject to subsection (b), the Secretary of Defense may transport to any country, without charge, supplies which have been furnished by a nongovernmental source and which are intended for humanitarian assistance. Such supplies may be transported only on a space available basis.

(b)(1) The Secretary may not transport supplies under subsection (a) unless the Secretary determines that—

(A) the transportation of such supplies is consistent with the foreign policy of the United States;

(B) the supplies to be transported are suitable for humanitarian purposes and are in usable condition;

(C) there is a legitimate humanitarian need for such supplies by the people for whom they are intended;

(D) the supplies will in fact be used for humanitarian purposes; and

(E) adequate arrangements have been made for the distribution of such supplies in the destination country.

(2) The President shall establish procedures for making the determinations required under paragraph (1). Such procedures shall include inspection of supplies before acceptance for transport.

(3) It shall be the responsibility of the donor to ensure that supplies to be transported under this section are suitable for transport.

(c)(1) Supplies transported under this section may be distributed by an agency of the United States Government, a foreign gov-

ernment, an international organization, or a private nonprofit relief organization.

(2) Supplies transported under this section may not be distributed, directly or indirectly, to any individual, group, or organization engaged in a military or paramilitary activity.

(d) Not later than July 31 each year, the Secretary of State shall submit to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on International Relations of the House of Representatives a report identifying the origin, contents, destination, and disposition of all supplies transported under this section during the 12-month period ending on the preceding June 30.

(Added P.L. 100–180, § 332(a), Dec. 4, 1987, 101 Stat. 1079; amended P.L. 101–510, § 1311(2), Nov. 5, 1990, 104 Stat. 1669; P.L. 104–106, § 1502(a)(8), Feb. 10, 1996, 110 Stat. 503; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

[§ 403. Repealed. P.L. 104–106, § 1061(g)(2), Feb. 10, 1996, 110 Stat. 443]

§ 404. Foreign disaster assistance

(a) IN GENERAL.—The President may direct the Secretary of Defense to provide disaster assistance outside the United States to respond to manmade or natural disasters when necessary to prevent loss of lives.

(b) FORMS OF ASSISTANCE.—Assistance provided under this section may include transportation, supplies, services, and equipment.

(c) NOTIFICATION REQUIRED.—Not later than 48 hours after the commencement of disaster assistance activities to provide assistance under this section, the President shall transmit to Congress a report containing notification of the assistance provided, and proposed to be provided, under this section and a description of so much of the following as is then available:

(1) The manmade or natural disaster for which disaster assistance is necessary.

(2) The threat to human lives presented by the disaster.

(3) The United States military personnel and material resources that are involved or expected to be involved.

(4) The disaster assistance that is being provided or is expected to be provided by other nations or public or private relief organizations.

(5) The anticipated duration of the disaster assistance activities.

(d) ORGANIZING POLICIES AND PROGRAMS.—Amounts appropriated to the Department of Defense for any fiscal year for Overseas Humanitarian, Disaster, and Civic Aid (OHDACA) programs of the Department shall be available for organizing general policies and programs for disaster relief programs for disasters occurring outside the United States.

(Added P.L. 103–337, § 1412(a), Oct. 5, 1994, 108 Stat. 2912.)

§ 405. Use of Department of Defense funds for United States share of costs of United Nations peacekeeping activities: limitation [2]

(a) PROHIBITION ON USE OF FUNDS.—Funds available to the Department of Defense may not be used to make a financial contribution (directly or through another department or agency of the United States) to the United Nations—

(1) for the costs of a United Nations peacekeeping activity; or

(2) for any United States arrearage to the United Nations.

(b) APPLICATION OF PROHIBITION.—The prohibition in subsection (a) applies to voluntary contributions, as well as to contributions pursuant to assessment by the United Nations for the United States share of the costs of a peacekeeping activity.

(Added P.L. 104–106, § 1301(a), Feb. 10, 1996, 110 Stat. 473.)

[§ 410. Repealed. P.L. 104–106, § 571(a)(1), Feb. 10, 1996, 110 Stat. 353]

[2] Section 1231(b) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (P.L. 105–261; 112 Stat. 2155) provides:

(b) PROHIBITION.—No funds available to the Department of Defense may be used—

(1) for a monetary contribution to the United Nations for the establishment of a standing international force under the United Nations; or

(2) to assign or detail any member of the Armed Forces to duty with a United Nations Stand By Force.

CHAPTER 21—DEPARTMENT OF DEFENSE INTELLIGENCE MATTERS

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SUBCHAPTER I—GENERAL MATTERS

Sec.
421. Funds for foreign cryptologic support.
422. Counterintelligence official reception and representation expenses.
423. Authority to use proceeds from counterintelligence operations of the military departments.
424. Disclosure of organizational and personnel information: exemption for Defense Intelligence Agency, National Reconnaissance Office, and National Imagery and Mapping Agency.
425. Prohibition of unauthorized use of name, initials, or seal: specified intelligence agencies.

§ 421. Funds for foreign cryptologic support

(a) The Secretary of Defense may use appropriated funds available to the Department of Defense for intelligence and communications purposes to pay for the expenses of arrangements with foreign countries for cryptologic support.

(b) The Secretary of Defense may use funds other than appropriated funds to pay for the expenses of arrangements with foreign countries for cryptologic support without regard for the provisions of law relating to the expenditure of United States Government funds, except that—

(1) no such funds may be expended, in whole or in part, by or for the benefit of the Department of Defense for a purpose for which Congress had previously denied funds; and

(2) proceeds from the sale of cryptologic items may be used only to purchase replacement items similar to the items that are sold; and

(3) the authority provided by this subsection may not be used to acquire items or services by the principal benefit of the United States.

(c) Any funds expended under the authority of subsection (a) shall be reported to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives pursuant to the provisions of title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.). Funds expended under the authority of subsection (b) shall be reported pursuant to procedures jointly agreed upon by such committees and the Secretary of Defense.

(Added as § 140a by P.L. 96–450, § 401(a), Oct. 14, 1980, 94 Stat. 1977; amended P.L. 97–258, § 3(b)(2), Sept. 13, 1982, 96 Stat. 1063; transferred, redesignated § 128; amended P.L. 99–433, §§ 101(a)(3), 110(d)(5), Oct. 1, 1986, 100 Stat. 994, 1002; transferred and redesignated § 421 P.L. 100–26, § 9(a)(2), April 21, 1987, 101 Stat. 287; amended P.L. 100–453, § 701(a), Sept. 29, 1988, 102 Stat. 1911; P.L. 101–189, § 1622(c)(a)(3), Nov. 29, 1989, 103 Stat. 1604.)

§ 422. Counterintelligence official reception and representation expenses

The Secretary of Defense may use funds available to the Department of Defense for counterintelligence programs to pay the expenses of hosting foreign officials in the United States under the auspices of the Department of Defense for consultation on counterintelligence matters.

(Added as § 140a P.L. 99–569, § 401, Oct. 27, 1986, 100 Stat. 3195; transferred and redesignated § 422 P.L. 100–26, § 9(a)(3), April 21, 1987, 101 Stat. 287.)

§ 423. Authority to use proceeds from counterintelligence operations of the military departments

(a) The Secretary of Defense may authorize, without regard to the provisions of section 3302 of title 31, use of proceeds from counterintelligence operations conducted by components of the military departments to offset necessary and reasonable expenses, not otherwise prohibited by law, incurred in such operations, and to make exceptional performance awards to personnel involved in such operations, if use of appropriated funds to meet such expenses or to make such awards would not be practicable.

(b) As soon as the net proceeds from such counterintelligence operations are no longer necessary for the conduct of those operations, such proceeds shall be deposited into the Treasury as miscellaneous receipts.

(c) The Secretary of Defense shall establish policies and procedures to govern acquisition, use, management, and disposition of proceeds from counterintelligence operations conducted by components of the military departments, including effective internal systems of accounting and administrative controls.

(Added as § 140b P.L. 99–569, § 403, Oct. 27, 1986, 100 Stat. 3196; transferred, redesignated § 423; amended P.L. 100–26, § 9(a)(3), (b)(3), April 21, 1987, 101 Stat. 287.)

§ 424. Disclosure of organizational and personnel information: exemption for Defense Intelligence Agency, National Reconnaissance Office, and National Imagery and Mapping Agency

(a) EXEMPTION FROM DISCLOSURE.—Except as required by the President or as provided in subsection (c), no provision of law shall be construed to require the disclosure of—

(1) the organization or any function of an organization of the Department of Defense named in subsection (b); or

(2) the number of persons employed by or assigned or detailed to any such organization or the name, official title, occupational series, grade, or salary of any such person.

(b) COVERED ORGANIZATIONS.—This section applies to the following organizations of the Department of Defense:

(1) The Defense Intelligence Agency.

(2) The National Reconnaissance Office.

(3) The National Imagery and Mapping Agency.

(c) PROVISION OF INFORMATION TO CONGRESS.—Subsection (a) does not apply with respect to the provision of information to Congress.

(Added as § 1607 P.L. 100–178, § 603(a), Dec. 2, 1987, 101 Stat 1016; transferred, redesignated § 424, and amended P.L. 100–453, § 703(a), Sept. 29, 1988, 102 Stat. 1912; P.L. 104–201, § 1112(d), Sept. 23, 1996, 110 Stat. 2683.)

§ 425. Prohibition of unauthorized use of name, initials, or seal: specified intelligence agencies

(a) PROHIBITION.—Except with the written permission of both the Secretary of Defense and the Director of Central Intelligence, no person may knowingly use, in connection with any merchandise, retail product, impersonation, solicitation, or commercial activity in a manner reasonably calculated to convey the impression that such use is approved, endorsed, or authorized by the Secretary and the Director, any of the following (or any colorable imitation thereof):

(1) The words "Defense Intelligence Agency", the initials "DIA", or the seal of the Defense Intelligence Agency.

(2) The words "National Reconnaissance Office", the initials "NRO", or the seal of the National Reconnaissance Office.

(3) The words "National Imagery and Mapping Agency", the initials "NIMA", or the seal of the National Imagery and Mapping Agency.

(4) The words "Defense Mapping Agency", the initials "DMA", or the seal of the Defense Mapping Agency.

(b) AUTHORITY TO ENJOIN VIOLATIONS.—Whenever it appears to the Attorney General that any person is engaged or is about to engage in an act or practice which constitutes or will constitute conduct prohibited by subsection (a), the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such act or practice. Such court shall proceed as soon as practicable to the hearing and determination of such action and may, at any time before final determination, enter such restraining orders or prohibitions, or take such other actions as is warranted, to prevent injury to the United States or to any person or class of persons for whose protection the action is brought.

(Added P.L. 105–107, § 503(a), Nov. 20, 1997, 111 Stat 2262; [former § 202(b) transferred and redesignated as § 425(b) by P.L. 105–107, § 503(b), Nov. 20, 1997, 111 Stat. 2262].)

SUBCHAPTER II—INTELLIGENCE COMMERCIAL ACTIVITIES

Sec.
431. Authority to engage in commercial activities as security for intelligence collection activities.
432. Use, disposition, and auditing of funds.
433. Relationship with other Federal laws.
434. Reservation of defenses and immunities.
435. Limitations.
436. Regulations.
437. Congressional oversight.

§ 431. Authority to engage in commercial activities as security for intelligence collection activities

(a) AUTHORITY.—The Secretary of Defense, subject to the provisions of this subchapter, may authorize the conduct of those commercial activities necessary to provide security for authorized intelligence collection activities abroad undertaken by the Department of Defense. No commercial activity may be initiated pursuant to this subchapter after December 31, 2002.

(b) INTERAGENCY COORDINATION AND SUPPORT.—Any such activity shall—

(1) be coordinated with, and (where appropriate) be supported by, the Director of Central Intelligence; and

(2) to the extent the activity takes place within the United States, be coordinated with, and (where appropriate) be supported by, the Director of the Federal Bureau of Investigation.

(c) DEFINITIONS.—In this subchapter:

(1) The term "commercial activities" means activities that are conducted in a manner consistent with prevailing commercial practices and includes—

(A) the acquisition, use, sale, storage and disposal of goods and services;

(B) entering into employment contracts and leases and other agreements for real and personal property;

(C) depositing funds into and withdrawing funds from domestic and foreign commercial business or financial institutions;

(D) acquiring licenses, registrations, permits, and insurance; and

(E) establishing corporations, partnerships, and other legal entities.

(2) The term "intelligence collection activities" means the collection of foreign intelligence and counterintelligence information.

(Added P.L. 102–88, § 504(a)(2), Aug. 14, 1991, 105 Stat. 437; amended P.L. 104–93, § 503, Jan. 6, 1996, 109 Stat. 973; P.L. 105–272, § 501, Oct. 20, 1998, 112 Stat. 2404; P.L. 106–398, § 1[1077], Oct. 30, 2000, 114 Stat. 1654, 1654A–282.)

§ 432. Use, disposition, and auditing of funds

(a) USE OF FUNDS.—Funds generated by a commercial activity authorized pursuant to this subchapter may be used to offset necessary and reasonable expenses arising from that activity. Use of such funds for that purpose shall be kept to the minimum necessary to conduct the activity concerned in a secure manner. Any funds generated by the activity in excess of those required for that

purpose shall be deposited, as often as may be practicable, into the Treasury as miscellaneous receipts.

(b) AUDITS.—(1) The Secretary of Defense shall assign an organization within the Department of Defense to have auditing responsibility with respect to activities authorized under this subchapter.

(2) That organization shall audit the use and disposition of funds generated by any commercial activity authorized under this subchapter not less often than annually. The results of all such audits shall be promptly reported to the intelligence committees (as defined in section 437(d) of this title).

(Added P.L. 102–88, § 504(a)(2), Aug. 14, 1991, 105 Stat. 437.)

§ 433. Relationship with other Federal laws

(a) IN GENERAL.—Except as provided by subsection (b), a commercial activity conducted pursuant to this subchapter shall be carried out in accordance with applicable Federal law.

(b) AUTHORIZATION OF WAIVERS WHEN NECESSARY TO MAINTAIN SECURITY.—(1) If the Secretary of Defense determines, in connection with a commercial activity authorized pursuant to section 431 of this title, that compliance with certain Federal laws or regulations pertaining to the management and administration of Federal agencies would create an unacceptable risk of compromise of an authorized intelligence activity, the Secretary may, to the extent necessary to prevent such compromise, waive compliance with such laws or regulations.

(2) Any determination and waiver by the Secretary under paragraph (1) shall be made in writing and shall include a specification of the laws and regulations for which compliance by the commercial activity concerned is not required consistent with this section.

(3) The authority of the Secretary under paragraph (1) may be delegated only to the Deputy Secretary of Defense, an Under Secretary of Defense, an Assistant Secretary of Defense, or a Secretary of a military department.

(c) FEDERAL LAWS AND REGULATIONS.—For purposes of this section, Federal laws and regulations pertaining to the management and administration of Federal agencies are only those Federal laws and regulations pertaining to the following:

(1) The receipt and use of appropriated and nonappropriated funds.

(2) The acquisition or management of property or services.

(3) Information disclosure, retention, and management.

(4) The employment of personnel.

(5) Payments for travel and housing.

(6) The establishment of legal entities or government instrumentalities.

(7) Foreign trade or financial transaction restrictions that would reveal the commercial activity as an activity of the United States Government.

(Added P.L. 102–88, § 504(a)(2), Aug. 14, 1991, 105 Stat. 437.)

§ 434. Reservation of defenses and immunities

The submission to judicial proceedings in a State or other legal jurisdiction, in connection with a commercial activity undertaken

pursuant to this subchapter, shall not constitute a waiver of the defenses and immunities of the United States.

(Added P.L. 102–88, § 504(a)(2), Aug. 14, 1991, 105 Stat. 437.)

§ 435. Limitations

(a) LAWFUL ACTIVITIES.—Nothing in this subchapter authorizes the conduct of any intelligence activity that is not otherwise authorized by law or Executive order.

(b) DOMESTIC ACTIVITIES.—Personnel conducting commercial activity authorized by this subchapter may only engage in those activities in the United States to the extent necessary to support intelligence activities abroad.

(c) PROVIDING GOODS AND SERVICES TO THE DEPARTMENT OF DEFENSE.—Commercial activity may not be undertaken within the United States for the purpose of providing goods and services to the Department of Defense, other than as may be necessary to provide security for the activities subject to this subchapter.

(d) NOTICE TO UNITED STATES PERSONS.—(1) In carrying out a commercial activity authorized under this subchapter, the Secretary of Defense may not permit an entity engaged in such activity to employ a United States person in an operational, managerial, or supervisory position, and may not assign or detail a United States person to perform operational, managerial, or supervisory duties for such an entity, unless that person is informed in advance of the intelligence security purpose of that activity.

(2) In this subsection, the term "United States person" means an individual who is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence.

(Added P.L. 102–88, § 504(a)(2), Aug. 14, 1991, 105 Stat. 437.)

§ 436. Regulations

The Secretary of Defense shall prescribe regulations to implement the authority provided in this subchapter. Such regulations shall be consistent with this subchapter and shall at a minimum—

(1) specify all elements of the Department of Defense who are authorized to engage in commercial activities pursuant to this subchapter;

(2) require the personal approval of the Secretary or Deputy Secretary of Defense for all sensitive activities to be authorized pursuant to this subchapter;

(3) specify all officials who are authorized to grant waivers of laws or regulations pursuant to section 433(b) of this title, or to approve the establishment or conduct of commercial activities pursuant to this subchapter;

(4) designate a single office within the Defense Intelligence Agency to be responsible for the management and supervision of all activities authorized under this subchapter;

(5) require that each commercial activity proposed to be authorized under this subchapter be subject to appropriate legal review before the activity is authorized; and

(6) provide for appropriate internal audit controls and oversight for such activities.

(Added P.L. 102–88, § 504(a)(2), Aug. 14, 1991, 105 Stat. 437.)

§ 437. Congressional oversight

(a) PROPOSED REGULATIONS.—Copies of regulations proposed to be prescribed under section 436 of this title (including any proposed revision to such regulations) shall be submitted to the intelligence committees not less than 30 days before they take effect.

(b) CURRENT INFORMATION.—Consistent with title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), the Secretary of Defense shall ensure that the intelligence committees are kept fully and currently informed of actions taken pursuant to this subchapter, including any significant anticipated activity to be authorized pursuant to this subchapter. The Secretary shall promptly notify the appropriate committees of Congress whenever a corporation, partnership, or other legal entity is established pursuant to this subchapter.

(c) ANNUAL REPORT.—Not later than January 15 of each year, the Secretary shall submit to the appropriate committees of Congress a report on all commercial activities authorized under this subchapter that were undertaken during the previous fiscal year. Such report shall include (with respect to the fiscal year covered by the report)—

(1) a description of any exercise of the authority provided by section 433(b) of this title;

(2) a description of any expenditure of funds made pursuant to this subchapter (whether from appropriated or nonappropriated funds); and

(3) a description of any actions taken with respect to audits conducted pursuant to section 432 of this title to implement recommendations or correct deficiencies identified in such audits.

(d) INTELLIGENCE COMMITTEES DEFINED.—In this section, 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 P.L. 102–88, § 504(a)(2), Aug. 14, 1991, 105 Stat. 437.)

CHAPTER 22—NATIONAL IMAGERY AND MAPPING AGENCY

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SUBCHAPTER I—MISSIONS AND AUTHORITY

Sec.
441. Establishment.
442. Missions.
443. Imagery intelligence and geospatial information: support for foreign countries.
444. Support from Central Intelligence Agency.
[445. Repealed.]

§ 441. Establishment

(a) ESTABLISHMENT.—The National Imagery and Mapping Agency is a combat support agency of the Department of Defense and has significant national missions.

(b) DIRECTOR.—(1) The Director of the National Imagery and Mapping Agency is the head of the agency.

(2) Upon a vacancy in the position of Director, the Secretary of Defense shall recommend to the President an individual for appointment to the position.

(3) If an officer of the armed forces on active duty is appointed to the position of Director, the position shall be treated as having been designated by the President as a position of importance and responsibility for purposes of section 601 of this title and shall carry the grade of lieutenant general, or, in the case of an officer of the Navy, vice admiral.

(c) DIRECTOR OF CENTRAL INTELLIGENCE COLLECTION TASKING AUTHORITY.—Unless otherwise directed by the President, the Director of Central Intelligence shall have authority (except as otherwise agreed by the Director and the Secretary of Defense) to—

(1) approve collection requirements levied on national imagery collection assets;

(2) determine priorities for such requirements; and

(3) resolve conflicts in such priorities.

(d) AVAILABILITY AND CONTINUED IMPROVEMENT OF IMAGERY INTELLIGENCE SUPPORT TO ALL-SOURCE ANALYSIS AND PRODUCTION FUNCTION.—The Secretary of Defense, in consultation with the Director of Central Intelligence, shall take all necessary steps to ensure the full availability and continued improvement of imagery intelligence support for all-source analysis and production.

(Added P.L. 104–201, § 1112(a), Sept. 23, 1996, 110 Stat. 2677.)

§ 442. Missions

(a) NATIONAL SECURITY MISSIONS.—(1) The National Imagery and Mapping Agency shall, in support of the national security objectives of the United States, provide the following:

(A) Imagery.

(B) Imagery intelligence.

(C) Geospatial information.

(2) Imagery, intelligence, and information provided in carrying out paragraph (1) shall be timely, relevant, and accurate.

(b) NAVIGATION INFORMATION.—The National Imagery and Mapping Agency shall improve means of navigating vessels of the Navy and the merchant marine by providing, under the authority of the Secretary of Defense, accurate and inexpensive nautical charts, sailing directions, books on navigation, and manuals of instructions for the use of all vessels of the United States and of navigators generally.

(c) MAPS, CHARTS, ETC.—The National Imagery and Mapping Agency shall prepare and distribute maps, charts, books, and geodetic products as authorized under subchapter II of this chapter.

(d) NATIONAL MISSIONS.—The National Imagery and Mapping Agency also has national missions as specified in section 120(a) of the National Security Act of 1947.

(e) SYSTEMS.—The National Imagery and Mapping Agency may, in furtherance of a mission of the Agency, design, develop, deploy, operate, and maintain systems related to the processing and dissemination of imagery intelligence and geospatial information that may be transferred to, accepted or used by, or used on behalf of—

(1) the armed forces, including any combatant command, component of a combatant command, joint task force, or tactical unit; or

(2) any other department or agency of the United States.

(Added P.L. 104–201, § 1112(a), Sept. 23, 1996, 110 Stat. 2677.)

§ 443. Imagery intelligence and geospatial information: support for foreign countries

(a) USE OF APPROPRIATED FUNDS.—The Director of the National Imagery and Mapping Agency may use appropriated funds available to the National Imagery and Mapping Agency to provide foreign countries with imagery intelligence and geospatial information support.

(b) USE OF FUNDS OTHER THAN APPROPRIATED FUNDS.—The Director may use funds other than appropriated funds to provide foreign countries with imagery intelligence and geospatial information support, notwithstanding provisions of law relating to the expenditure of funds of the United States, except that—

(1) no such funds may be expended, in whole or in part, by or for the benefit of the National Imagery and Mapping Agency for a purpose for which Congress had previously denied funds;

(2) proceeds from the sale of imagery intelligence or geospatial information items may be used only to purchase replacement items similar to the items that are sold; and

(3) the authority provided by this subsection may not be used to acquire items or services for the principal benefit of the United States.

(c) ACCOMMODATION PROCUREMENTS.—The authority under this section may be exercised to conduct accommodation procurements on behalf of foreign countries.

(d) COORDINATION WITH DIRECTOR OF CENTRAL INTELLIGENCE.—The Director of the Agency shall coordinate with the Director of Central Intelligence any action under this section that involves imagery intelligence or intelligence products or involves providing support to an intelligence or security service of a foreign country.

(Added P.L. 104–201, § 1112(a), Sept. 23, 1996, 110 Stat. 2677; amended P.L. 105–85, § 1073(a)(7), Nov. 18, 1997, 111 Stat. 1900.)

§ 444. Support from Central Intelligence Agency

(a) SUPPORT AUTHORIZED.—The Director of Central Intelligence may provide support in accordance with this section to the Director of the National Imagery and Mapping Agency. The Director of the National Imagery and Mapping Agency may accept support provided under this section.

(b) ADMINISTRATIVE AND CONTRACT SERVICES.—(1) In furtherance of the national intelligence effort, the Director of Central Intelligence may provide administrative and contract services to the National Imagery and Mapping Agency as if that agency were an organizational element of the Central Intelligence Agency.

(2) Services provided under paragraph (1) may include the services of security police. For purposes of section 15 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403o), an installation of the National Imagery and Mapping Agency that is provided security police services under this section shall be considered an installation of the Central Intelligence Agency.

(3) Support provided under this subsection shall be provided under terms and conditions agreed upon by the Secretary of Defense and the Director of Central Intelligence.

(c) DETAIL OF PERSONNEL.—The Director of Central Intelligence may detail personnel of the Central Intelligence Agency indefinitely to the National Imagery and Mapping Agency without regard to any limitation on the duration of interagency details of Federal Government personnel.

(d) REIMBURSABLE OR NONREIMBURSABLE SUPPORT.—Support under this section may be provided and accepted on either a reimbursable basis or a nonreimbursable basis.

(e) AUTHORITY TO TRANSFER FUNDS.—(1) The Director of the National Imagery and Mapping Agency may transfer funds available for that agency to the Director of Central Intelligence for the Central Intelligence Agency.

(2) The Director of Central Intelligence—

(A) may accept funds transferred under paragraph (1); and

(B) shall expend such funds, in accordance with the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.), to provide administrative and contract services or detail per-

sonnel to the National Imagery and Mapping Agency under this section.

(Added P.L. 104–201, § 1112(a), Sept. 23, 1996, 110 Stat. 2677.)

[§ 445. Repealed. P.L. 105–107, § 503(c), Nov. 20, 1997, 111 Stat. 2262]

SUBCHAPTER II—MAPS, CHARTS, AND GEODETIC PRODUCTS

Sec.
451. Maps, charts, and books.
452. Pilot charts.
453. Sale of maps, charts, and navigational publications: prices; use of proceeds.
454. Exchange of mapping, charting, and geodetic data with foreign countries and international organizations.
455. Maps, charts, and geodetic data: public availability; exceptions.
456. Civil actions barred.
457. Operational files previously maintained by or concerning activities of National Photographic Interpretation Center: authority to withhold from public disclosure.

§ 451. Maps, charts, and books

The Secretary of Defense may—

(1) have the National Imagery and Mapping Agency prepare maps, charts, and nautical books required in navigation and have those materials published and furnished to navigators; and

(2) buy the plates and copyrights of existing maps, charts, books on navigation, and sailing directions and instructions.

(Added as § 2792 P.L. 97–295, § 1(50)(C), Oct. 12, 1982, 96 Stat. 1299; transferred, redesignated § 451, and amended P.L. 104–201, § 1112(b)(1), (2), Sept. 23, 1996, 110 Stat. 2682.)

§ 452. Pilot charts

(a) There shall be conspicuously printed on pilot charts prepared in the National Imagery and Mapping Agency the following: "Prepared from data furnished by the National Imagery and Mapping Agency of the Department of Defense and by the Department of Commerce, and published at the National Imagery and Mapping Agency under the authority of the Secretary of Defense".

(b) The Secretary of Commerce shall furnish to the National Imagery and Mapping Agency, as quickly as possible, all meteorological information received by the Secretary that is necessary for, and of the character used in, preparing pilot charts.

(Added as § 2793 P.L. 97–295, § 1(50)(C), Oct. 12, 1982, 96 Stat. 1299; transferred, redesignated § 452, and amended P.L. 104–201, § 1112(b)(1), (2), Sept. 23, 1996, 110 Stat. 2682.)

§ 453. Sale of maps, charts, and navigational publications: prices; use of proceeds

(a) PRICES.—All maps, charts, and other publications offered for sale by the National Imagery and Mapping Agency shall be sold at prices and under regulations that may be prescribed by the Secretary of Defense.

(b) USE OF PROCEEDS TO PAY FOREIGN LICENSING FEES.—(1) The Secretary of Defense may pay any NIMA foreign data acquisition fee out of the proceeds of the sale of maps, charts, and other

publications of the Agency, and those proceeds are hereby made available for that purpose.

(2) In this subsection, the term "NIMA foreign data acquisition fee" means any licensing or other fee imposed by a foreign country or international organization for the acquisition or use of data or products by the National Imagery and Mapping Agency.

(Added as § 2794 P.L. 97–295, § 1(50)(C), Oct. 12, 1982, 96 Stat. 1299; transferred, redesignated § 453, and amended P.L. 104–201, § 1112(b), Sept. 23, 1996, 110 Stat. 2682; amended in its entirety P.L. 106–65, § 1010(a), Oct. 5, 1999, 113 Stat. 739.)

§ 454. Exchange of mapping, charting, and geodetic data with foreign countries and international organizations

The Secretary of Defense may authorize the National Imagery and Mapping Agency to exchange or furnish mapping, charting, and geodetic data, supplies and services to a foreign country or international organization pursuant to an agreement for the production or exchange of such data.

(Added as § 2795 P.L. 99–569, § 601(a), Oct. 27, 1986, 100 Stat. 3202; transferred, redesignated § 454, and amended P.L. 104–201, § 1112(b)(1), (2), Sept. 23, 1996, 110 Stat. 2682.)

§ 455. Maps, charts, and geodetic data: public availability; exceptions

(a) The National Imagery and Mapping Agency shall offer for sale maps and charts at scales of 1:500,000 and smaller, except those withheld in accordance with subsection (b) or those specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense or foreign policy and in fact properly classified pursuant to such Executive order.

(b)(1) Notwithstanding any other provision of law, the Secretary of Defense may withhold from public disclosure any geodetic product in the possession of, or under the control of, the Department of Defense—

(A) that was obtained or produced, or that contains information that was provided, pursuant to an international agreement that restricts disclosure of such product or information to government officials of the agreeing parties or that restricts use of such product or information to government purposes only;

(B) that contains information that the Secretary of Defense has determined in writing would, if disclosed, reveal sources and methods, or capabilities, used to obtain source material for production of the geodetic product; or

(C) that contains information that the Director of the National Imagery and Mapping Agency has determined in writing would, if disclosed, jeopardize or interfere with ongoing military or intelligence operations, reveal military operational or contingency plans, or reveal, jeopardize, or compromise military or intelligence capabilities.

(2) In this subsection, the term "geodetic product" means imagery, imagery intelligence, or geospatial information.

(c)(1) Regulations to implement this section (including any amendments to such regulations) shall be published in the Federal Register for public comment for a period of not less than 30 days before they take effect.

(2) Regulations under this section shall address the conditions under which release of geodetic products authorized under subsection (b) to be withheld from public disclosure would be appropriate—

(A) in the case of allies of the United States; and

(B) in the case of qualified United States contractors (including contractors that are small business concerns) who need such products for use in the performance of contracts with the United States.

(Added as § 2796 P.L. 102–88, § 502(a), Aug. 14, 1991, 105 Stat. 435; amended P.L. 103–359, § 502, Oct. 14, 1994, 108 Stat. 3430; transferred, redesignated § 455, and amended P.L. 104–201, § 1112(b)(1), (2), Sept. 23, 1996, 110 Stat. 2682; amended P.L. 105–85, § 933(a), (b)(1), Nov. 18, 1997, 111 Stat. 1866; P.L. 106–398, § 1[1074], Oct. 30, 2000, 114 Stat. 1654, 1654A–280.)

§ 456. Civil actions barred

(a) CLAIMS BARRED.—No civil action may be brought against the United States on the basis of the content of a navigational aid prepared or disseminated by the Defense Mapping Agency.

(b) NAVIGATIONAL AIDS COVERED.—Subsection (a) applies with respect to a navigational aid in the form of a map, a chart, or a publication and any other form or medium of product or information in which the Defense Mapping Agency prepares or disseminates navigational aids.

(Added as § 2798 P.L. 103–337, § 1074(b), Oct. 5, 1994, 108 Stat. 2861; transferred, redesignated § 456, and amended P.L. 104–201, § 1112(b)(1), (2), Sept. 23, 1996, 110 Stat. 2682.)

§ 457. Operational files previously maintained by or concerning activities of National Photographic Interpretation Center: authority to withhold from public disclosure

(a) AUTHORITY.—The Secretary of Defense may withhold from public disclosure operational files described in subsection (b) to the same extent that operational files may be withheld under section 701 of the National Security Act of 1947 (50 U.S.C. 431).

(b) COVERED OPERATIONAL FILES.—The authority under subsection (a) applies to operational files in the possession of the National Imagery and Mapping Agency that—

(1) as of September 22, 1996, were maintained by the National Photographic Interpretation Center; or

(2) concern the activities of the Agency that, as of such date, were performed by the National Photographic Interpretation Center.

(c) OPERATIONAL FILES DEFINED.—In this section, the term "operational files" has the meaning given that term in section 701(b) of the National Security Act of 1947 (50 U.S.C. 431(b)).

(Added P.L. 106–65, § 1045(a), Oct. 5, 1999, 113 Stat. 762.)

SUBCHAPTER III—PERSONNEL MANAGEMENT

Sec.
461. Management rights.

§ 461. Management rights

(a) SCOPE.—If there is no obligation under the provisions of chapter 71 of title 5 for the head of an agency of the United States to consult or negotiate with a labor organization on a particular

matter by reason of that matter being covered by a provision of law or a Governmentwide regulation, the Director of the National Imagery and Mapping Agency is not obligated to consult or negotiate with a labor organization on that matter even if that provision of law or regulation is inapplicable to the National Imagery and Mapping Agency.

(b) BARGAINING UNITS.—The National Imagery and Mapping Agency shall accord exclusive recognition to a labor organization under section 7111 of title 5 only for a bargaining unit that was recognized as appropriate for the Defense Mapping Agency on the day before the date on which employees and positions of the Defense Mapping Agency in that bargaining unit became employees and positions of the National Imagery and Mapping Agency under the National Imagery and Mapping Agency Act of 1996 (title XI of the National Defense Authorization Act for Fiscal Year 1997).

(c) TERMINATION OF BARGAINING UNIT COVERAGE OF POSITION MODIFIED TO AFFECT NATIONAL SECURITY DIRECTLY.—(1) If the Director of the National Imagery and Mapping Agency determines that the responsibilities of a position within a collective bargaining unit should be modified to include intelligence, counterintelligence, investigative, or security duties not previously assigned to that position and that the performance of the newly assigned duties directly affects the national security of the United States, then, upon such a modification of the responsibilities of that position, the position shall cease to be covered by the collective bargaining unit and the employee in that position shall cease to be entitled to representation by a labor organization accorded exclusive recognition for that collective bargaining unit.

(2) A determination described in paragraph (1) that is made by the Director of the National Imagery and Mapping Agency may not be reviewed by the Federal Labor Relations Authority or any court of the United States.

(Added P.L. 104–201, § 1112(a), Sept. 23, 1996, 110 Stat. 2677.)

SUBCHAPTER IV—DEFINITIONS

Sec.
467. Definitions.

§ 467. Definitions

In this chapter:

(1) The term "function" means any duty, obligation, responsibility, privilege, activity, or program.

(2)(A) The term "imagery" means, except as provided in subparagraph (B), a likeness or presentation of any natural or manmade feature or related object or activity and the positional data acquired at the same time the likeness or representation was acquired, including—

(i) products produced by space-based national intelligence reconnaissance systems; and

(ii) likenesses or presentations produced by satellites, airborne platforms, unmanned aerial vehicles, or other similar means.

(B) Such term does not include handheld or clandestine photography taken by or on behalf of human intelligence collection organizations.

(3) The term "imagery intelligence" means the technical, geographic, and intelligence information derived through the interpretation or analysis of imagery and collateral materials.

(4) The term "geospatial information" means information that identifies the geographic location and characteristics of natural or constructed features and boundaries on the earth and includes—

(A) statistical data and information derived from, among other things, remote sensing, mapping, and surveying technologies; and

(B) mapping, charting, geodetic data, and related products.

(Added P.L. 104–201, § 1112(a), Sept. 23, 1996, 110 Stat. 2677; amended P.L. 105–85, § 933(b)(2), Nov. 18, 1997, 111 Stat. 1866.)

CHAPTER 23—MISCELLANEOUS STUDIES AND REPORTS

Sec.
481. Race relations, gender discrimination, and hate group activity: annual survey and report.
482. Quarterly reports: personnel and unit readiness.
483. Reports on transfers from high-priority readiness appropriations.
484. Annual report on aircraft inventory.
485. Joint warfighting experimentation.
486. Quadrennial report on emerging operational concepts.
487. Unit operations tempo and personnel tempo: annual report.

§ 481. Race relations, gender discrimination, and hate group activity: annual survey and report

(a) ANNUAL SURVEY.—The Secretary of Defense shall carry out an annual survey to measure the state of racial, ethnic, and gender issues and discrimination among members of the Armed Forces serving on active duty and the extent (if any) of activity among such members that may be seen as so-called "hate group" activity. The survey shall solicit information on the race relations and gender relations climate in the Armed Forces, including—

(1) indicators of positive and negative trends of relations among all racial and ethnic groups and between the sexes;

(2) the effectiveness of Department of Defense policies designed to improve race, ethnic, and gender relations; and

(3) the effectiveness of current processes for complaints on and investigations into racial, ethnic, and gender discrimination.

(b) IMPLEMENTING ENTITY.—The Secretary shall carry out each annual survey through the entity in the Department of Defense known as the Armed Forces Survey on Race/Ethnic Issues.

(c) REPORTS TO CONGRESS.—Upon completion of each annual survey under subsection (a), the Secretary shall submit to Congress a report containing the results of the survey.

(Added as § 451 P.L. 103–337, § 554(a)(1), Oct. 5, 1994, 108 Stat. 2773; amended and redesignated § 481 P.L. 104–201, §§ 571(c), 1121(a), Sept. 23, 1996, 110 Stat. 2532, 2687.)

§ 482. Quarterly reports: personnel and unit readiness

(a) QUARTERLY REPORTS REQUIRED.—Not later than 45 days after the end of each calendar-year quarter, the Secretary of Defense shall submit to Congress a report regarding military readiness. The report for a quarter shall contain the information required by subsections (b), (d), and (e).

(b) READINESS PROBLEMS AND REMEDIAL ACTIONS.—Each report shall specifically describe—

(1) each readiness problem and deficiency identified using the assessments considered under subsection (c);

(2) planned remedial actions; and

(3) the key indicators and other relevant information related to each identified problem and deficiency.

(c) CONSIDERATION OF READINESS ASSESSMENTS.—The information required under subsection (b) to be included in the report for a quarter shall be based on readiness assessments that are provided during that quarter—

(1) to any council, committee, or other body of the Department of Defense—

(A) that has responsibility for readiness oversight; and

(B) whose membership includes at least one civilian officer in the Office of the Secretary of Defense at the level of Assistant Secretary of Defense or higher;

(2) by senior civilian and military officers of the military departments and the commanders of the unified and specified commands; and

(3) as part of any regularly established process of periodic readiness reviews for the Department of Defense as a whole.

(d) COMPREHENSIVE READINESS INDICATORS FOR ACTIVE COMPONENTS.—Each report shall also include information regarding each of the active components of the armed forces (and an evaluation of such information) with respect to each of the following readiness indicators:

(1) PERSONNEL STRENGTH.—

(A) Personnel status, including the extent to which members of the armed forces are serving in positions outside of their military occupational specialty, serving in grades other than the grades for which they are qualified, or both.

(B) Historical data and projected trends in personnel strength and status.

(2) PERSONNEL TURBULENCE.—

(A) Recruit quality.

(B) Borrowed manpower.

(C) Personnel stability.

(3) OTHER PERSONNEL MATTERS.—

(A) Personnel morale.

(B) Recruiting status.

(4) TRAINING.—

(A) Training unit readiness and proficiency.

(B) Operations tempo.

(C) Training funding.

(D) Training commitments and deployments.

(5) LOGISTICS—EQUIPMENT FILL.—

(A) Deployed equipment.

(B) Equipment availability.

(C) Equipment that is not mission capable.

(D) Age of equipment.

(E) Condition of nonpacing items.

(6) LOGISTICS—EQUIPMENT MAINTENANCE.—

(A) Maintenance backlog.

(7) LOGISTICS—SUPPLY.—

(A) Availability of ordnance and spares.

(B) Status of prepositioned equipment.

(e) UNIT READINESS INDICATORS.—Each report shall also include information regarding the readiness of each active component unit of the armed forces at the battalion, squadron, or an equiva-

lent level (or a higher level) that received a readiness rating of C–3 (or below) for any month of the calendar-year quarter covered by the report. With respect to each such unit, the report shall separately provide the following information:

(1) The unit designation and level of organization.

(2) The overall readiness rating for the unit for the quarter and each month of the quarter.

(3) The resource area or areas (personnel, equipment and supplies on hand, equipment condition, or training) that adversely affected the unit's readiness rating for the quarter.

(4) The reasons why the unit received a readiness rating of C–3 (or below).

(f) CLASSIFICATION OF REPORTS.—A report under this section shall be submitted in unclassified form. To the extent the Secretary of Defense determines necessary, the report may also be submitted in classified form.

(Added as § 452 P.L. 104–106, § 361(a)(1), Feb. 10, 1996, 110 Stat. 272; redesignated § 482 P.L. 104–201, § 1121(a), Sept. 23, 1996, 110 Stat. 2687; amended P.L. 105–85, § 322(a)(1), Nov. 18, 1997, 111 Stat. 1673; P.L. 105–261, § 373(d)(2)(A), Oct. 17, 1998, 112 Stat. 1992; P.L. 106–65, § 361(e), Oct. 5, 1999, 113 Stat. 575.)

§ 483. Reports on transfers from high-priority readiness appropriations

(a) ANNUAL REPORTS.—Not later than the date on which the President submits the budget for a fiscal year to Congress pursuant to section 1105 of title 31, the Secretary of Defense 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 on transfers during the preceding fiscal year from funds available for each covered budget activity.

(b) MIDYEAR REPORTS.—Not later than June 1 of each fiscal year, the Secretary of Defense shall submit to the congressional committees specified in subsection (a) a report on transfers, during the first six months of that fiscal year, from funds available for each covered budget activity.

(c) MATTERS TO BE INCLUDED.—In each report under subsection (a) or (b), the Secretary of Defense shall include for each covered budget activity the following:

(1) A statement, for the period covered by the report, of—

(A) the total amount of transfers into funds available for that activity;

(B) the total amount of transfers from funds available for that activity; and

(C) the net amount of transfers into, or out of, funds available for that activity.

(2) A detailed explanation of the transfers into, and out of, funds available for that activity during the period covered by the report, including identification of the sources from which funds were transferred into that activity and identification of the recipients of the funds transferred out of that activity.

(d) COVERED BUDGET ACTIVITY DEFINED.—In this section, the term "covered budget activity" means each of the following:

(1) The budget activity groups (known as "subactivities") within the Operating Forces budget activity of the annual

Operation and Maintenance, Army, appropriation that are designated as follows:

(A) All subactivities under the category of Land Forces.

(B) Land Forces Depot Maintenance.

(C) Base Support.

(D) Maintenance of Real Property.

(2) The Air Operations budget activity groups (known as "subactivities") within the Operating Forces budget activity of the annual Operation and Maintenance, Navy, appropriation that are designated as follows:

(A) Mission and Other Flight Operations.

(B) Fleet Air Training.

(C) Aircraft Depot Maintenance.

(D) Base Support.

(E) Maintenance of Real Property.

(3) The Ship Operations budget activity groups (known as "subactivities") within the Operating Forces budget activity of the annual Operation and Maintenance, Navy, appropriation that are designated as follows:

(A) Mission and Other Ship Operations.

(B) Ship Operational Support and Training.

(C) Ship Depot Maintenance.

(D) Base Support.

(E) Maintenance of Real Property.

(4) The Expeditionary Forces budget activity groups (known as "subactivities") within the Operating Forces budget activity of the annual Operation and Maintenance, Marine Corps, appropriation that are designated as follows:

(A) Operational Forces.

(B) Depot Maintenance.

(C) Base Support.

(D) Maintenance of Real Property.

(5) The Air Operations and Combat Related Operations budget activity groups (known as "subactivities") within the Operating Forces budget activity of the annual Operation and Maintenance, Air Force, appropriation that are designated as follows:

(A) Primary Combat Forces.

(B) Primary Combat Weapons.

(C) Air Operations Training.

(D) Depot Maintenance.

(E) Base Support.

(F) Maintenance of Real Property.

(G) Combat Enhancement Forces.

(H) Combat Communications.

(6) The Mobility Operations budget activity group (known as a "subactivity") within the Mobilization budget activity of the annual Operation and Maintenance, Air Force, appropriation that is designated as Airlift Operations.

(Added P.L. 105–85, § 323(a), Nov. 18, 1997, 111 Stat. 1675; amended P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774; P.L. 106–398, § 1[372], Oct. 30, 2000, 114 Stat. 1654, 1654A–80.)

§ 484. Annual report on aircraft inventory

(a) ANNUAL REPORT.—The Under Secretary of Defense (Comptroller) shall submit to Congress each year a report on the aircraft in the inventory of the Department of Defense. The Under Secretary shall submit the report when the President submits the budget to Congress under section 1105(a) of title 31.

(b) CONTENT.—The report shall set forth, in accordance with subsection (c), the following information:

(1) The total number of aircraft in the inventory.

(2) The total number of the aircraft in the inventory that are active, stated in the following categories (with appropriate subcategories for mission aircraft, training aircraft, dedicated test aircraft, and other aircraft):

(A) Primary aircraft.

(B) Backup aircraft.

(C) Attrition and reconstitution reserve aircraft.

(3) The total number of the aircraft in the inventory that are inactive, stated in the following categories:

(A) Bailment aircraft.

(B) Drone aircraft.

(C) Aircraft for sale or other transfer to foreign governments.

(D) Leased or loaned aircraft.

(E) Aircraft for maintenance training.

(F) Aircraft for reclamation.

(G) Aircraft in storage.

(4) The aircraft inventory requirements approved by the Joint Chiefs of Staff.

(c) DISPLAY OF INFORMATION.—The report shall specify the information required by subsection (b) separately for the active component of each armed force and for each reserve component of each armed force and, within the information set forth for each such component, shall specify the information separately for each type, model, and series of aircraft provided for in the future-years defense program submitted to Congress.

(Added P.L. 105–85, § 324(a)(1), Nov. 18, 1997, 111 Stat. 1677.)

§ 485. Joint warfighting experimentation

(a) ANNUAL REPORT.—The commander of the combatant command assigned by the Secretary of Defense to have the mission for joint warfighting experimentation shall submit to the Secretary an annual report on the conduct of joint experimentation activities for the fiscal year ending in the year of the report. Not later than December 1 of each year, the Secretary shall submit that report, together with any comments that the Secretary considers appropriate and any comments that the Chairman of the Joint Chiefs of Staff considers appropriate, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(b) MATTERS TO BE INCLUDED.—Each report under this section shall include, for the fiscal year covered by the report, the following:

(1) Any changes in the assessments of the matters described in section 923(a)(2) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 since the preparation of the assessments of those matters set forth in the latest report submitted under this section.

(2) A description of the conduct of joint experimentation activities, including the number of activities, the forces involved, the national security challenges addressed, the operational concepts assessed, and the scenarios and measures of effectiveness used.

(3) An assessment of the results of joint warfighting experimentation within the Department of Defense.

(4) With respect to joint warfighting experimentation, any recommendations that the commander considers appropriate regarding—

(A) the development or acquisition of advanced technologies;

(B) changes in organizational structure, operational concepts, or joint doctrine;

(C) the conduct of experiments;

(D) the adequacy of resources; or

(E) changes in authority of the commander to develop or acquire materiel, supplies, services, or equipment directly for the conduct of joint warfighting experimentation.

(5) With respect to improving the effectiveness of joint warfighting, any recommendations that the commander considers appropriate, based on the results of joint warfighting experimentation, regarding—

(A) the development, procurement, or fielding of advanced technologies, systems, or weapons or systems platforms or other changes in doctrine, operational concepts, organization, training, materiel, leadership, personnel, or the allocation of resources;

(B) the reduction or elimination of redundant equipment and forces, including guidance regarding the synchronization of the fielding of advanced technologies among the armed forces to enable the development and execution of joint operational concepts;

(C) recommendations for mission needs statements, operational requirements, and relative priorities for acquisition programs to meet joint requirements; and

(D) a description of any actions taken by the Secretary of Defense to implement the recommendations of the commander.

(Added P.L. 105–261, § 923(b)(1), Oct. 17, 1998, 112 Stat. 2105; amended P.L. 106–65, §§ 931, 1067(1), Oct. 5, 1999, 113 Stat. 726, 774.)

§ 486. Quadrennial report on emerging operational concepts

(a) QUADRENNIAL REPORT REQUIRED.—Not later than March 1 of each year evenly divisible by four, 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 emerging operational concepts. Each such report shall be

prepared by the Secretary in consultation with the Chairman of the Joint Chiefs of Staff.

(b) CONTENT OF REPORT RELATING TO DOD PROCESSES.—Each such report shall contain a description, for the four years preceding the year in which the report is submitted, of the following:

(1) The process undertaken in the Department of Defense, and in each of the Army, Navy, Air Force, and Marine Corps, to define and develop doctrine, operational concepts, organizational concepts, and acquisition strategies to address—

(A) the potential of emerging technologies for significantly improving the operational effectiveness of the armed forces;

(B) changes in the international order that may necessitate changes in the operational capabilities of the armed forces;

(C) emerging capabilities of potential adversary states; and

(D) changes in defense budget projections.

(2) The manner in which the processes described in paragraph (1) are harmonized to ensure that there is a sufficient consideration of the development of joint doctrine, operational concepts, and acquisition strategies.

(3) The manner in which the processes described in paragraph (1) are coordinated through the Joint Requirements Oversight Council and reflected in the planning, programming, and budgeting process of the Department of Defense.

(c) CONTENT OF REPORT RELATING TO IDENTIFICATION OF TECHNOLOGICAL OBJECTIVES FOR RESEARCH AND DEVELOPMENT.—Each report under this section shall set forth the military capabilities that are necessary for meeting national security requirements over the next two to three decades, including—

(1) the most significant strategic and operational capabilities (including both armed force-specific and joint capabilities) that are necessary for the armed forces to prevail against the most dangerous threats, including asymmetrical threats, that could be posed to the national security interests of the United States by potential adversaries from 20 to 30 years in the future;

(2) the key characteristics and capabilities of future military systems (including both armed force-specific and joint systems) that will be needed to meet each such threat; and

(3) the most significant research and development challenges that must be met, and the technological breakthroughs that must be made, to develop and field such systems.

(Added P.L. 106–65, § 241(a)(1), Oct. 5, 1999, 113 Stat. 549.)

§ 487. Unit operations tempo and personnel tempo: annual report

(a) INCLUSION IN ANNUAL REPORT.—The Secretary of Defense shall include in the annual report required by section 113(c) of this title a description of the operations tempo and personnel tempo of the armed forces.

(b) SPECIFIC REQUIREMENTS.—(1) Until such time as the Secretary of Defense develops a common method to measure oper-

ations tempo and personnel tempo for the armed forces, the description required under subsection (a) shall include the methods by which each of the armed forces measures operations tempo and personnel tempo.

(2) The description shall include the personnel tempo policies of each of the armed forces and any changes to these policies since the preceding report.

(3) The description shall include a table depicting the active duty end strength for each of the armed forces for each of the preceding five years and also depicting the number of members of each of the armed forces deployed over the same period, as determined by the Secretary concerned.

(4) The description shall identify the active and reserve component units of the armed forces participating at the battalion, squadron, or an equivalent level (or a higher level) in contingency operations, major training events, and other exercises and contingencies of such a scale that the exercises and contingencies receive an official designation, that were conducted during the period covered by the report and the duration of their participation.

(5) For each of the armed forces, the description shall indicate the average number of days a member of that armed force was deployed away from the member's home station during the period covered by the report as compared to recent previous years for which such information is available.

(6) For each of the armed forces, the description shall indicate the number of days that high demand, low density units (as defined by the Chairman of the Joint Chiefs of Staff) were deployed during the period covered by the report, and whether these units met the force goals for limiting deployments, as described in the personnel tempo policies applicable to that armed force.

(c) OPERATIONS TEMPO AND PERSONNEL TEMPO DEFINED.—Until such time as the Secretary of Defense establishes definitions of operations tempo and personnel tempo applicable to all of the armed forces, the following definitions shall apply for purposes of the preparation of the description required under subsection (a):

(1) The term "operations tempo" means the rate at which units of the armed forces are involved in all military activities, including contingency operations, exercises, and training deployments.

(2) The term "personnel tempo" means the amount of time members of the armed forces are engaged in their official duties, including official duties at a location or under circumstances that make it infeasible for a member to spend off-duty time in the housing in which the member resides when on garrison duty at the member's permanent duty station.

(d) OTHER DEFINITIONS.—In this section, the term "armed forces" does not include the Coast Guard when it is not operating as a service in the Department of the Navy.

(Added P.L. 106–65, § 923(b)(1), Oct. 5, 1999, 113 Stat. 724.)

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CHAPTER 31—ENLISTMENTS

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[520a. Repealed.]
520b. Applicants for enlistment: authority to use funds for the issue of authorized articles.
520c. Recruiting functions: use of funds.

§ 501. Definition

In this chapter "enlistment" means original enlistment or reenlistment.

(Added P.L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754.)

§ 502. Enlistment oath: who may administer

Each person enlisting in an armed force shall take the following oath:

> "I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice. So help me God."

This oath may be taken before any commissioned officer of any armed force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 17, § 502, formerly § 501, amended Oct. 5, 1962, P.L. 87–751, § 1, 76 Stat. 748, and redesignated Jan. 2, 1968, P.L. 90–235, § 2(a)(1)(A), 81 Stat. 753; Nov. 29, 1989, P.L. 101–189, § 653(a)(1), 103 Stat. 1462.)

§ 503. Enlistments: recruiting campaigns; compilation of directory information [1]

(a) RECRUITING CAMPAIGNS.—(1) The Secretary concerned shall conduct intensive recruiting campaigns to obtain enlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, and Regular Coast Guard.

(2) The Secretary of Defense shall act on a continuing basis to enhance the effectiveness of recruitment programs of the Department of Defense (including programs conducted jointly and programs conducted by the separate armed forces) through an aggressive program of advertising and market research targeted at prospective recruits for the armed forces and those who may influence prospective recruits. Subchapter I of chapter 35 of title 44 shall not apply to actions taken as part of that program.

(b) COMPILATION OF DIRECTORY INFORMATION.—(1) The Secretary of Defense may collect and compile directory information pertaining to each student who is 17 years of age or older or in the eleventh grade (or its equivalent) or higher and who is enrolled in a secondary school in the United States or its territories, possessions, or the Commonwealth of Puerto Rico.

(2) The Secretary may make directory information collected and compiled under this subsection available to the armed forces for military recruiting purposes. Such information may not be disclosed for any other purpose.

(3) Directory information pertaining to any person may not be maintained for more than 3 years after the date the information pertaining to such person is first collected and compiled under this subsection.

(4) Directory information collected and compiled under this subsection shall be confidential, and a person who has had access to such information may not disclose such information except for the purposes described in paragraph (2).

(5) The Secretary of Defense shall prescribe regulations to carry out this subsection. Regulations prescribed under this subsection shall be submitted to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives. Regulations prescribed by the Secretaries concerned to carry out this subsection shall be as uniform as practicable.

(6) Nothing in this subsection shall be construed as requiring, or authorizing the Secretary of Defense to require, that any educational institution furnish directory information to the Secretary.

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[1] Section 1114(a) of the Department of Defense Authorization Act, 1983 (P.L. 97–252; 96 Stat. 748), provides:

SEC. 1114. (a) The Congress finds that in order for Congress to carry out effectively its constitutional authority to raise and support armies, it is essential—

(1) that the Secretary of Defense obtain and compile directory information pertaining to students enrolled in secondary schools throughout the United States; and

(2) that such directory information be used only for military recruiting purposes and be retained in the case of each person with respect to whom such information is obtained and compiled for a limited period of time.

(c)[2] Each local educational agency is requested to provide to the Department of Defense, upon a request made for military recruiting purposes, the same access to secondary school students, and to directory information concerning such students, as is provided generally to post-secondary educational institutions or to prospective employers of those students.

(d) DIRECTORY INFORMATION DEFINED.—In this section, the term "directory information" has the meaning given that term in

[2] Effective July 1, 2002, pursuant to section 563 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654A–131), subsection (c) is amended to read as follows:

(c) ACCESS TO SECONDARY SCHOOLS.—(1) Each local educational agency shall (except as provided under paragraph (5)) provide to the Department of Defense, upon a request made for military recruiting purposes, the same access to secondary school students, and to directory information concerning such students, as is provided generally to post-secondary educational institutions or to prospective employers of those students.

(2) If a local educational agency denies a request by the Department of Defense for recruiting access, the Secretary of Defense, in cooperation with the Secretary of the military department concerned, shall designate an officer in a grade not below the grade of colonel or, in the case of the Navy, captain, or a senior executive of that military department to meet with representatives of that local educational agency in person, at the offices of that agency, for the purpose of arranging for recruiting access. The designated officer or senior executive shall seek to have that meeting within 120 days of the date of the denial of the request for recruiting access.

(3) If, after a meeting under paragraph (2) with representatives of a local educational agency that has denied a request for recruiting access or (if the educational agency declines a request for the meeting) after the end of such 120-day period, the Secretary of Defense determines that the agency continues to deny recruiting access, the Secretary shall transmit to the chief executive of the State in which the agency is located a notification of the denial of recruiting access and a request for assistance in obtaining that access. The notification shall be transmitted within 60 days after the date of the determination. The Secretary shall provide to the Secretary of Education a copy of such notification and any other communication between the Secretary and that chief executive with respect to such access.

(4) If a local educational agency continues to deny recruiting access one year after the date of the transmittal of a notification regarding that agency under paragraph (3), the Secretary—

(A) shall determine whether the agency denies recruiting access to at least two of the armed forces (other than the Coast Guard when it is not operating as a service in the Navy); and

(B) upon making an affirmative determination under subparagraph (A), shall transmit a notification of the denial of recruiting access to—

(i) the specified congressional committees;

(ii) the Senators of the State in which the local educational agency is located; and

(iii) the member of the House of Representatives who represents the district in which the local educational agency is located.

(5) The requirements of this subsection do not apply to—

(A) a local educational agency with respect to access to secondary school students or access to directory information concerning such students for any period during which there is in effect a policy of that agency, established by majority vote of the governing body of the agency, to deny recruiting access to those students or to that directory information, respectively; or

(B) a private secondary school which maintains a religious objection to service in the armed forces and which objection is verifiable through the corporate or other organizational documents or materials of that school.

(6) In this subsection:

(A) The term "local educational agency" means—

(i) a local educational agency, within the meaning of that term in section 14101(18) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801(18)); and

(ii) a private secondary school.

(B) The term "recruiting access" means access requested as described in paragraph (1).

(C) The term "senior executive" has the meaning given that term in section 3132(a)(3) of title 5.

(D) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

(E) The term "specified congressional committees" means the following:

(i) The Committee on Armed Services and the Committee on Health, Education, Labor, and Pensions of the Senate.

(ii) The Committee on Armed Services and the Committee on Education and the Workforce of the House of Representatives.

(F) The term "member of the House of Representatives" includes a Delegate or Resident Commissioner to Congress.

subsection (a)(5)(A) of section 444 of the General Education Provisions Act (20 U.S.C. 1232g).

(Added P.L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754; amended P.L. 97–252, § 1114(b)(1), (2), Sept. 8, 1982, 96 Stat. 749; P.L. 104–106, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; P.L. 106–65, §§ 571, 1067(1), Oct. 5, 1999, 113 Stat. 622, 774; P.L. 106–398, § 1[562, 563(a)–(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–131.)

§ 504. Persons not qualified

No person who is insane, intoxicated, or a deserter from an armed force, or who has been convicted of a felony, may be enlisted in any armed force. However, the Secretary concerned may authorize exceptions, in meritorious cases, for the enlistment of deserters and persons convicted of felonies.

(Added P.L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754.)

§ 505. Regular components: qualifications, term, grade

(a) The Secretary concerned may accept original enlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be, of qualified, effective, and able-bodied persons who are not less than seventeen years of age nor more than thirty-five years of age. However, no person under eighteen years of age may be originally enlisted without the written consent of his parent or guardian, if he has a parent or guardian entitled to his custody and control.

(b) A person is enlisted in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard in the grade or rating prescribed by the Secretary concerned.

(c) The Secretary concerned may accept original enlistments of persons for the duration of their minority or for a period of at least two but not more than six years, in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be.

(d)(1) The Secretary concerned may accept a reenlistment in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be, for a period determined under this subsection.

(2) In the case of a member who has less than 10 years of service in the armed forces as of the day before the first day of the period for which reenlisted, the period for which the member reenlists shall be at least two years but not more than six years.

(3) In the case of a member who has at least 10 years of service in the armed forces as of the day before the first day of the period for which reenlisted, the Secretary concerned may accept a reenlistment for either—

(A) a specified period of at least two years but not more than six years; or

(B) an unspecified period.

(4) No enlisted member is entitled to be reenlisted for a period that would expire before the end of the member's current enlistment.

(Added P.L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754; amended P.L. 93–290, §§ 1, 2, May 24, 1974, 88 Stat. 173; P.L. 95–485, § 820(a), Oct. 20, 1978, 92 Stat. 1627; P.L. 98–94, § 1023, Sept. 24, 1983, 97 Stat. 671; P.L. 104–201, § 511, Sept. 23, 1996, 110 Stat. 2514.)

§ 506. Regular components: extension of enlistments during war

An enlistment in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard in effect at the beginning of a war, or entered into during a war, unless sooner terminated by the President, continues in effect until six months after the termination of that war.

(Added P.L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754.)

§ 507. Extension of enlistment for members needing medical care or hospitalization

(a) An enlisted member of an armed force on active duty whose term of enlistment expires while he is suffering from disease or injury incident to service and not due to his misconduct, and who needs medical care or hospitalization, may be retained on active duty, with his consent, until he recovers to the extent that he is able to meet the physical requirements for reenlistment, or it is determined that recovery to that extent is impossible.

(b) This section does not prevent the retention in service, without his consent, of an enlisted member of an armed force under section 972 of this title.

(Added P.L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754.)

§ 508. Reenlistment: qualifications

(a) No person whose service during his last term of enlistment was not honest and faithful may be reenlisted in an armed force. However, the Secretary concerned may authorize the reenlistment in the armed force under his jurisdiction of such a person if his conduct after that service has been good.

(b) A person discharged from a Regular component may be reenlisted in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be, under such regulations as the Secretary concerned may prescribe.

(c) This section does not deprive a person of any right to be reenlisted in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard under any other provision of law.

(Added P.L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 755.)

§ 509. Voluntary extension of enlistments: periods and benefits

(a) Under such regulations as the Secretary concerned may prescribe, the term of enlistment of a member of an armed force may be extended or reextended with his written consent for any period. However, the total of all such extensions of an enlistment may not exceed four years.

(b) When a member is discharged from an enlistment that has been extended under this section, he has the same rights, privileges, and benefits that he would have if discharged at the same time from an enlistment not so extended.

(Added P.L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754.)

[§§ 510 to 512. Transferred to §§ 12102 to 12104]

§ 513. Enlistments: Delayed Entry Program [3]

(a) A person with no prior military service who is qualified under section 505 of this title and applicable regulations for enlistment in a regular component of an armed force may (except as provided in subsection (c)) be enlisted as a Reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve for a term of not less than six years nor more than eight years.

(b)(1) Unless sooner ordered to active duty under chapter 39 of this title or another provision of law, a person enlisted under subsection (a) shall, within 365 days after such enlistment, be discharged from the reserve component in which enlisted and immediately be enlisted in the regular component of an armed force. The Secretary concerned may extend the 365-day period for any person for up to an additional 365 days if the Secretary determines that it is in the best interests of the armed force of which that person is a member to do so.

(2) During the period beginning on the date on which the person enlists under subsection (a) and ending on the date on which

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[3] Section 573 of the National Defense Authorization Act for Fiscal Year 2000 (P.L. 106–65; 113 Stat. 623) provides:

SEC. 573. ARMY COLLEGE FIRST PILOT PROGRAM.

(a) PROGRAM REQUIRED.—The Secretary of the Army shall establish a pilot program (to be known as the "Army College First" program) to assess whether the Army could increase the number of, and the level of the qualifications of, persons entering the Army as enlisted members by encouraging recruits to pursue higher education or vocational or technical training before entry into active service in the Army.

(b) DELAYED ENTRY WITH ALLOWANCE FOR HIGHER EDUCATION.—Under the pilot program, the Secretary may exercise the authority under section 513 of title 10, United States Code—

(1) to accept the enlistment of a person as a Reserve for service in the Selected Reserve or Individual Ready Reserve of the Army Reserve or, notwithstanding the scope of the authority under subsection (a) of that section, in the Army National Guard of the United States;

(2) to authorize, notwithstanding the period limitation in subsection (b) of that section, a delay of the enlistment of any such person in a regular component under that subsection for the period during which the person is enrolled in, and pursuing a program of education at, an institution of higher education, or a program of vocational or technical training, on a full-time basis that is to be completed within two years after the date of such enlistment as a Reserve under paragraph (1); and

(3) in the case of a person enlisted in a reserve component for service in the Individual Ready Reserve, pay an allowance to the person for each month of that period.

(c) MAXIMUM PERIOD OF DELAY.—The period of delay authorized a person under paragraph (2) of subsection (b) may not exceed the two-year period beginning on the date of the person's enlistment accepted under paragraph (1) of such subsection.

(d) AMOUNT OF ALLOWANCE.—(1) The monthly allowance paid under subsection (b)(3) is $150. The allowance may not be paid for more than 24 months.

(2) An allowance under this section is in addition to any other pay or allowance to which a member of a reserve component is entitled by reason of participation in the Ready Reserve of that component.

(e) COMPARISON GROUP.—To perform the assessment under subsection (a), the Secretary may define and study any group not including persons receiving a benefit under subsection (b) and compare that group with any group or groups of persons who receive such benefits under the pilot program.

(f) DURATION OF PILOT PROGRAM.—The pilot program shall be in effect during the period beginning on October 1, 1999, and ending on September 30, 2004.

(g) 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 pilot program. The report shall include the following:

(1) The assessment of the Secretary regarding the value of the authority under this section for achieving the objectives of increasing the number of, and the level of the qualifications of, persons entering the Army as enlisted members.

(2) Any recommendation for legislation or other action that the Secretary considers appropriate to achieve those objectives through grants of entry delays and financial benefits for advanced education and training of recruits.

the person is enlisted in a regular component under paragraph (1), the person shall be in the Ready Reserve of the armed force concerned.

(c) A person who is under orders to report for induction into an armed force under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), except as provided in clause (ii) or (iii) of section 6(c)(2)(A) of that Act, may not be enlisted under subsection (a).

(d) This section shall be carried out under regulations to be 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.

(Added P.L. 101–189, § 501(a), Nov. 29, 1989, 103 Stat. 1435; amended P.L. 101–510, § 1484(k)(2), Nov. 5, 1990, 104 Stat. 1719; P.L. 104–201, § 512(a), (b), Sept. 23, 1996, 110 Stat. 2514; P.L. 106–65, § 572(a), Oct. 5, 1999, 113 Stat. 623.)

§ 514. Bounties prohibited; substitutes prohibited

(a) No bounty may be paid to induce any person to enlist in an armed force. A clothing allowance or enlistment bonus authorized by law is not a bounty for the purposes of this subsection.

(b) No person liable for active duty in an armed force under this subtitle may furnish a substitute for that active duty. No person may be enlisted or appointed in an armed force as a substitute for another person.

(Aug. 10, 1956, ch. 1041, 70A Stat. 19.)

§ 515. Reenlistment after discharge as warrant officer

A person who has been discharged from a regular component of an armed force under section 1165 or 1166 of this title may, upon his request and in the discretion of the Secretary concerned, be enlisted in that armed force in the grade prescribed by the Secretary. However, a person discharged under section 1165 of this title may not be enlisted in a grade lower than the grade that he held immediately before appointment as a warrant officer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 19.)

§ 516. Effect upon enlisted status of acceptance of appointment as cadet or midshipman

(a) The enlistment or period of obligated service of an enlisted member of the armed forces who accepts an appointment as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy or in the Naval Reserve, may not be terminated because of the acceptance of that appointment. However, while serving as a cadet or midshipman at an Academy, he is entitled only to the pay, allowances, compensation, pensions, and other benefits provided by law for such a cadet or midshipman or, if he is a midshipman in the Naval Reserve, to the compensation and emoluments of a midshipman in the Naval Reserve.

(b) If a person covered by subsection (a) is separated from service as a cadet or midshipman, or from service as a midshipman in the Naval Reserve, for any reason other than his appointment as a commissioned officer of a regular or reserve component of an armed force or because of a physical disability, he resumes his en-

listed status and shall complete the period of service for which he was enlisted or for which he has an obligation, unless he is sooner discharged. In computing the unexpired part of an enlistment or period of obligated service for the purposes of this subsection, all service as a cadet or midshipman is counted as service under that enlistment or period of obligated service.

(Added P.L. 85–861, § 1(9)(A), Sept. 2, 1958, 72 Stat. 1439.)

§ 517. Authorized daily average: members in pay grades E–8 and E–9

(a) The authorized daily average number of enlisted members on active duty (other than for training) in an armed force in pay grades E–8 and E–9 in a fiscal year may not be more than 2 percent (or, in the case of the Army, 2.5 percent) and 1 percent, respectively, of the number of enlisted members of that armed force who are on active duty (other than for training) on the first day of that fiscal year. In computing the limitations prescribed in the preceding sentence, there shall be excluded enlisted members of an armed force on active duty (other than for training) in connection with organizing, administering, recruiting, instructing, or training the reserve component of an armed force.

(b) Whenever the number of members serving in pay grade E–9 is less than the number authorized for that grade under subsection (a), the difference between the two numbers may be applied to increase the number authorized under such subsection for pay grade E–8.

(c) Whenever under section 527 of this title the President may suspend the operation of any provision of section 523, 525, or 526 of this title, the Secretary of Defense may suspend the operation of any provision of this section. Any such suspension shall, if not sooner ended, end in the manner specified in section 527 for a suspension under that section.

(Added P.L. 87–649, § 2(1), Sept. 7, 1962, 76 Stat. 492; amended P.L. 96–584, § 4, Dec. 23, 1980, 94 Stat. 3377; P.L. 97–86, § 503(1), (2), Dec. 1, 1981, 95 Stat. 1107, 1108; P.L. 97–252, § 503(a), Sept. 8, 1982, 96 Stat. 727; P.L. 98–94, § 503, Sept. 24, 1983, 97 Stat. 631; P.L. 98–525, § 413(a), 414(a), Oct. 19, 1984, 98 Stat. 2517; P.L. 99–145, § 413(a), Nov. 8, 1985, 99 Stat. 619; P.L. 100–180, § 413(a), Dec. 4, 1987, 101 Stat. 1083; P.L. 101–189, § 413(a), Nov. 29, 1989, 103 Stat. 1433; P.L. 102–190, § 413(a), Dec. 5, 1991, 105 Stat. 1352; P.L. 103–160, § 413(a), Nov. 30, 1993, 107 Stat. 1643; P.L. 103–337, §§ 552(a), 1662(a)(4), Oct. 5, 1994, 108 Stat. 2772, 2988; P.L. 105–261, §§ 407(a), 1069(a)(2), Oct. 17, 1998, 112 Stat. 1996, 2135; P.L. 106–398, § 1[421(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–95.)

§ 518. Temporary enlistments

Temporary enlistments may be made only in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, without specification of component.

(Added P.L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 755.)

§ 519. Temporary enlistments: during war or emergency

Except as provided in section 505 of this title and except for enlistments as Reserves of an armed force—

(1) temporary enlistments in an armed force entered into in time of war or of emergency declared by Congress shall be for the duration of the war or emergency plus six months; and

(2) only persons at least eighteen years of age and otherwise qualified under regulations to be prescribed by the Secretary concerned are eligible for such enlistments.

(Added P.L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 755.)

§ 520. Limitation on enlistment and induction of persons whose score on the Armed Forces Qualification Test is below a prescribed level [4]

(a) The number of persons originally enlisted or inducted to serve on active duty (other than active duty for training) in any armed force during any fiscal year whose score on the Armed Forces Qualification Test is at or above the tenth percentile and below the thirty-first percentile may not exceed 20 percent of the total number of persons originally enlisted or inducted to serve on active duty (other than active duty for training) in such armed force during such fiscal year.

(b) A person who is not a high school graduate may not be accepted for enlistment in the armed forces unless the score of that person on the Armed Forces Qualification Test is at or above the thirty-first percentile; however, a person may not be denied enlistment in the armed forces solely because of his not having a high school diploma if his enlistment is needed to meet established strength requirements.

(Added P.L. 96–342, § 302(b)(1), Sept. 8, 1980, 94 Stat. 1082; amended P.L. 96–579, § 9, Dec. 23, 1980, 94 Stat. 3369; P.L. 97–86, § 402(b)(1), Dec. 1, 1981, 95 Stat. 1104; P.L. 98–94, § 1268(3), Sept. 24, 1983, 97 Stat. 705; P.L. 100–370, § 1(a)(1), July 19, 1988, 102 Stat. 840.)

[§ 520a. Repealed. P.L. 106–398, § 1[1076(g)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–282]

§ 520b. Applicants for enlistment: authority to use funds for the issue of authorized articles

Funds appropriated to the Department of Defense may be used for the issue of authorized articles to applicants for enlistment.

(Added P.L. 98–525, § 1401(a), Oct. 19, 1984, 98 Stat. 2614; amended P.L. 99–145, § 1303(a), Nov. 8, 1985, 99 Stat. 738.)

§ 520c. Recruiting functions: use of funds

(a) PROVISION OF MEALS AND REFRESHMENTS.—Under regulations prescribed by the Secretary concerned, funds appropriated to the Department of Defense for recruitment of military personnel may be expended for small meals and refreshments during recruiting functions for the following persons:

(1) Persons who have enlisted under the Delayed Entry Program authorized by section 513 of this title.

(2) Persons who are objects of armed forces recruiting efforts.

(3) Persons whose assistance in recruiting efforts of the military departments is determined to be influential by the Secretary concerned.

[4] See section 3262 for percentage limitation on Army enlistees and inductees who are not high school graduates.

(4) Members of the armed forces and Federal employees when attending recruiting events in accordance with a requirement to do so.

(5) Other persons whose presence at recruiting efforts will contribute to recruiting efforts.

(b) ANNUAL REPORT.—Not later than February 1 of each of the years 1998 through 2002, the Secretary of Defense shall submit to Congress a report on the extent to which the authority under subsection (a) was exercised during the fiscal year ending in the preceding year.

(c) TERMINATION OF AUTHORITY.—The authority in subsection (a) may not be exercised after September 30, 2001.

(Added P.L. 104–201, § 361(a), Sept. 23, 1996, 110 Stat. 2291.)

CHAPTER 32—OFFICER STRENGTH AND DISTRIBUTION IN GRADE

Sec.
521. Authority to prescribe total strengths of officers on active duty and officer strengths in various categories.
522. Authorized total strengths: regular commissioned officers on active duty.
523. Authorized strengths: commissioned officers on active duty in grades of major, lieutenant colonel, and colonel and Navy grades of lieutenant commander, commander, and captain.
[524. Transferred.]
525. Distribution of commissioned officers on active duty in general officer and flag officer grades.
526. Authorized strength: general and flag officers on active duty.
527. Authority to suspend sections 523, 525, and 526.
528. Limitation on number of officers on active duty in grades of general and admiral.

§ 521. Authority to prescribe total strengths of officers on active duty and officer strengths in various categories

(a) Whenever the needs of the services require, but at least once each fiscal year, the Secretary of Defense shall prescribe the total authorized active-duty strength as of the end of the fiscal year for officers in grades above chief warrant officer, W–5, for each of the armed forces under the jurisdiction of the Secretary of a military department.

(b) Under regulations prescribed by the Secretary of Defense, the Secretary of each military department may, for an armed force under his jurisdiction, prescribe the strength of any category of officers that may serve on active duty.

(Added P.L. 96–513, § 103, Dec. 12, 1980, 94 Stat. 2841; amended P.L. 102–190, § 1131(1)(A), Dec. 5, 1991, 105 Stat. 1505.)

§ 522. Authorized total strengths: regular commissioned officers on active duty

The authorized strengths of the Army, Navy, Air Force, and Marine Corps in regular officers (other than retired officers) in grades above chief warrant officer, (W–5), are as follows:

Army	63,000
Navy	55,000
Air Force	80,000
Marine Corps	17,000

(Added P.L. 96–513, § 103, Dec. 12, 1980, 94 Stat. 2841; amended P.L. 98–525, § 522, Oct. 19, 1984, 98 Stat. 2523; P.L. 102–90, § 1131(1)(B), Dec. 5, 1991, 105 Stat. 1505.)

§ 523. Authorized strengths: commissioned officers on active duty in grades of major, lieutenant colonel, and colonel and Navy grades of lieutenant commander, commander, and captain

(a)(1) Except as provided in subsection (c), of the total number of commissioned officers serving on active duty in the Army, Air Force, or Marine Corps at the end of any fiscal year (excluding officers in categories specified in subsection (b)), the number of officers who may be serving on active duty in each of the grades of major, lieutenant colonel, and colonel may not, as of the end of such fiscal year, exceed a number determined in accordance with the following table:

Total number of commissioned officers (excluding officers in categories specified in subsection (b)) on active duty:	Number of officers who may be serving on active duty in the grade of:		
	Major	Lieutenant Colonel	Colonel
Army:			
20,000	6,848	5,253	1,613
25,000	7,539	5,642	1,796
30,000	8,231	6,030	1,980
35,000	8,922	6,419	2,163
40,000	9,614	6,807	2,347
45,000	10,305	7,196	2,530
50,000	10,997	7,584	2,713
55,000	11,688	7,973	2,897
60,000	12,380	8,361	3,080
65,000	13,071	8,750	3,264
70,000	13,763	9,138	3,447
75,000	14,454	9,527	3,631
80,000	15,146	9,915	3,814
85,000	15,837	10,304	3,997
90,000	16,529	10,692	4,181
95,000	17,220	11,081	4,364
100,000	17,912	11,469	4,548
110,000	19,295	12,246	4,915
120,000	20,678	13,023	5,281
130,000	22,061	13,800	5,648
170,000	27,593	16,908	7,116
Air Force:			
35,000	9,216	7,090	2,125
40,000	10,025	7,478	2,306
45,000	10,835	7,866	2,487
50,000	11,645	8,253	2,668
55,000	12,454	8,641	2,849
60,000	13,264	9,029	3,030
65,000	14,073	9,417	3,211
70,000	14,883	9,805	3,392
75,000	15,693	10,193	3,573
80,000	16,502	10,582	3,754
85,000	17,312	10,971	3,935
90,000	18,121	11,360	4,115
95,000	18,931	11,749	4,296
100,000	19,741	12,138	4,477
105,000	20,550	12,527	4,658
110,000	21,360	12,915	4,838
115,000	22,169	13,304	5,019
120,000	22,979	13,692	5,200

Total number of commissioned officers (excluding officers in categories specified in subsection (b)) on active duty:	Number of officers who may be serving on active duty in the grade of:		
	Major	Lieutenant Colonel	Colonel
125,000	23,789	14,081	5,381
Marine Corps:			
10,000	2,525	1,480	571
12,500	2,900	1,600	592
15,000	3,275	1,720	613
17,500	3,650	1,840	633
20,000	4,025	1,960	654
22,500	4,400	2,080	675
25,000	4,775	2,200	695.

(2) Except as provided in subsection (c), of the total number of commissioned officers serving on active duty in the Navy at the end of any fiscal year (excluding officers in categories specified in subsection (b)), the number of officers who may be serving on active duty in each of the grades of lieutenant commander, commander, and captain may not, as of the end of such fiscal year, exceed a number determined in accordance with the following table:

Total number of commissioned officers (excluding officers in categories specified in subsection (b)) on active duty:	Number of officers who may be serving on active duty in grade of:		
	Lieutenant commander	Commander	Captain
Navy:			
30,000	7,331	5,018	2,116
33,000	7,799	5,239	2,223
36,000	8,267	5,460	2,330
39,000	8,735	5,681	2,437
42,000	9,203	5,902	2,544
45,000	9,671	6,123	2,651
48,000	10,139	6,343	2,758
51,000	10,606	6,561	2,864
54,000	11,074	6,782	2,971
57,000	11,541	7,002	3,078
60,000	12,009	7,222	3,185
63,000	12,476	7,441	3,292
66,000	12,944	7,661	3,398
70,000	13,567	7,954	3,541
90,000	16,683	9,419	4,254.

(3) If the total number of commissioned officers serving on active duty in an armed force (excluding officers in categories specified in subsection (b)) is between any two consecutive figures listed in the first column of the appropriate table in paragraph (1) or (2), the corresponding authorized strengths for each of the grades shown in that table for that armed force are determined by mathematical interpolation between the respective numbers of the two strengths. If the total number of commissioned officers serving on active duty in an armed force (excluding officers in categories specified in subsection (b)) is greater or less than the figures listed in the first column of the appropriate table in paragraph (1) or (2), the Secretary concerned shall fix the corresponding strengths for the

grades shown in that table in the same proportion as reflected in the nearest limit shown in the table.

(b) Officers in the following categories shall be excluded in computing and determining authorized strengths under this section:

(1) Reserve officers—

(A) on active duty for training;

(B) on active duty under section 10211, 10302 through 10305, or 12402 of this title or under section 708 of title 32;

(C) on active duty under section 12301(d) of this title in connection with organizing, administering, recruiting, instructing, or training the reserve components;

(D) on active duty to pursue special work;

(E) ordered to active duty under section 12304 of this title; or

(F) on full-time National Guard duty.

(2) General and flag officers.

(3) Medical officers.

(4) Dental officers.

(5) Warrant officers.

(6) Retired officers on active duty under a call or order to active duty for 180 days or less.

(7) Reserve or retired officers on active duty under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) for the administration of the Selective Service System.

(c) Whenever the number of officers serving in any grade is less than the number authorized for that grade under this section, the difference between the two numbers may be applied to increase the number authorized under this section for any lower grade.

(d) An officer may not be reduced in grade, or have his pay or allowances reduced, because of a reduction in the number of commissioned officers authorized for his grade under this section.

(Added P.L. 96–513, § 103, Dec. 12, 1980, 94 Stat. 2842; amended P.L. 98–525, § 414(a)(3), Oct. 19, 1984, 98 Stat. 2518; P.L. 99–145, § 511(a), Nov. 8, 1985, 99 Stat. 623; P.L. 99–433, § 531(a)(1), Oct. 1, 1986, 100 Stat. 1063; P.L. 102–190, § 431, Dec. 5, 1991, 105 Stat. 1354; P.L. 103–337, § 1671(c)(3), Oct. 5, 1994, 108 Stat. 3014.)

[§ 524. Transferred to § 12011]

§ 525. Distribution of commissioned officers on active duty in general officer and flag officer grades

(a) No appointment may be made in a grade above brigadier general in the Army, Air Force, or Marine Corps if that appointment would result in more than 50 percent of the general officers of that armed force on active duty being in grades above brigadier general. No appointment may be made in a grade above rear admiral (lower half) in the Navy if that appointment would result in more than 50 percent of the flag officers of the Navy on active duty being in grades above rear admiral (lower half).

(b)(1) No appointment may be made in a grade above major general in the Army or Air Force if that appointment would result in more than 15.7 percent of the general officers of that armed force on active duty being in grades above major general. Of the

15.7 percent of general officers of the Army or Air Force on active duty who may be serving in grades above major general, not more than 25 percent may be serving in the grade of general.

(2)(A) No appointment may be made in a grade above rear admiral in the Navy if that appointment would result in more than 15.7 percent of the flag officers of the Navy on active duty being in grades above rear admiral. Of the 15.7 percent of flag officers on active duty who may be serving in grades above rear admiral, not more than 25 percent may be serving in the grade of admiral.

(B) No appointment may be made in a grade above major general in the Marine Corps if that appointment would result in more than 16.2 percent of the general officers of the Marine Corps on active duty being in grades above major general.

(3) An officer while serving as Chairman or Vice Chairman of the Joint Chiefs of Staff or as Chief of Staff to the President, if serving in the grade of general or admiral, is in addition to the number that would otherwise be permitted for his armed force for that grade under paragraph (1) or (2).[1]

(4)(A) An officer while serving in a position designated under subparagraph (B), if serving in the grade of lieutenant general or vice admiral, is in addition to the number that would otherwise be permitted for that officer's armed force for that grade under paragraph (1) or (2).

(B) The President, with the advice and assistance of the Secretary of Defense and the Chairman of the Joint Chiefs of Staff, may designate not more than seven positions within the Joint Staff (provided for under section 155 of this title) as positions referred to in subparagraph (A). The authority of the President under the preceding sentence may not be delegated.

(5)(A) An officer while serving in a position specified in section 604(b) of this title, if serving in the grade of general or admiral, is in addition to the number that would otherwise be permitted for that officer's armed force for officers serving on active duty in grades above major general or rear admiral, as the case may be, under the first sentence of paragraph (1) or (2), as applicable. Any increase by reason of the preceding sentence in the number of officers of an armed force serving on active duty in grades above major general or rear admiral may only be realized by an increase in the number of lieutenant generals or vice admirals, as the case may be, serving on active duty, and any such increase may not be construed as authorizing an increase in the limitation on the total number of general or flag officers for that armed force under section 526(a) of this title or in the number of general and flag officers that may be designated under section 526(b) of this title.

(B) Subparagraph (A) does not apply in the case of an officer serving in such a position if the Secretary of Defense, when considering officers for recommendation to the President for appointment to fill the vacancy in that position which was filled by that officer,

[1] Section 102(c)(3)(C) of the National Security Act of 1947 (50 U.S.C. 403(c)(3)(C)) provides that if a commissioned officer is serving in the position of Director of Central Intelligence, Deputy Director of Central Intelligence, or Deputy Director of Central Intelligence for Community Management, that officer, while serving in such position, shall not be counted against the numbers and percentages of commissioned officers of the rank and grade of such officer authorized for the military department of that officer.

did not have a recommendation for that appointment from each Secretary of a military department who (pursuant to section 604(a) of this title) was required to make such a recommendation.

(C) This paragraph shall cease to be effective at the end of September 30, 2003.

(6) An officer while serving as Chief of the National Guard Bureau is in addition to the number that would otherwise be permitted for that officer's armed force for officers serving on active duty in grades above major general under paragraph (1).

(7) An officer of the Army while serving as Superintendent of the United States Military Academy, if serving in the grade of lieutenant general, is in addition to the number that would otherwise be permitted for the Army for officers serving on active duty in grades above major general under paragraph (1). An officer of the Navy or Marine Corps while serving as Superintendent of the United States Naval Academy, if serving in the grade of vice admiral or lieutenant general, is in addition to the number that would otherwise be permitted for the Navy or Marine Corps, respectively, for officers serving on active duty in grades above major general or rear admiral under paragraph (1) or (2). An officer while serving as Superintendent of the United States Air Force Academy, if serving in the grade of lieutenant general, is in addition to the number that would otherwise be permitted for the Air Force for officers serving on active duty in grades above major general under paragraph (1).

(c)(1) Subject to paragraph (3), the President—

(A) may make appointments in the Army, Air Force, and Marine Corps in the grade of lieutenant general and in the Army and Air Force in the grade of general in excees of the applicable numbers determined under subsection (b)(1), and may make appointments in the Marine Corps in the grade of general in addition to the Commandant and Assistant Commandant, if each such appointment is made in conjunction with an offsetting reduction under paragraph (2); and

(B) may make appointments in the Navy in the grades of vice admiral and admiral in excess of the applicable numbers determined under subsection (b)(2) if each such appointment is made in conjunction with an offsetting reduction under paragraph (2).

(2) For each appointment made under the authority of paragraph (1) in the Army, Air Force, or Marine Corps in the grade of lieutenant general or general or in the Navy in the grade of vice admiral or admiral, the number of appointments that may be made in the equivalent grade in one of the other armed forces (other than the Coast Guard) shall be reduced by one. When such an appointment is made, the President shall specify the armed force in which the reduction required by this paragraph is to be made.

(3)(A) The number of officers that may be serving on active duty in the grades of lieutenant general and vice admiral by reason of appointments made under the authority of paragraph (1) may not exceed the number equal to 10 percent of the total number of officers that may be serving on active duty in those grades in the Army, Navy, Air Force, and Marine Corps under subsection (b).

(B) The number of officers that may be serving on active duty in the grades of general and admiral by reason of appointments made under the authority of paragraph (1) may not exceed the number equal to 15 percent of the total number of general officers and flag officers that may be serving on active duty in those grades in the Army, Navy, Air Force, and Marine Corps.

(4) Upon the termination of the appointment of an officer in the grade of lieutenant general or vice admiral or general or admiral that was made in connection with an increase under paragraph (1) in the number of officers that may be serving on active duty in that armed force in that grade, the reduction made under paragraph (2) in the number of appointments permitted in such grade in another armed force by reason of that increase shall no longer be in effect.

(d) An officer continuing to hold the grade of general or admiral under section 601(b)(4) of this title after relief from the position of Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps shall not be counted for purposes of this section.

(Added P.L. 96–513, § 103, Dec. 12, 1980, 94 Stat. 2844; amended P.L. 97–86, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Nov. 8, 1985, P.L. 99–145, § 514(b)(1), 99 Stat. 626; P.L. 99–433, § 202(a), Oct. 1, 1986, 100 Stat. 1010; P.L. 100–180, § 511(a), Dec. 4, 1987, 101 Stat. 1088; P.L. 101–510, § 405, Nov. 5, 1990, 104 Stat. 1546; P.L. 103–337, § 405(a), Oct. 5, 1994, 108 Stat. 2744; P.L. 104–106, § 403(a), Feb. 10, 1996, 110 Stat. 286; P.L. 104–201, § 404(b), Sept. 23, 1996, 110 Stat. 2506; P.L. 105–261, §§ 404, 406, Oct. 17, 1998, 112 Stat. 1996; P.L. 106–65, §§ 509(b), (c), 532(b), Oct. 5, 1999, 113 Stat. 592, 604; P.L. 106–398, § 1[507(g)], Oct. 30, 2000, 114 Stat. 1654, 1654A–105.)

§ 526. Authorized strength: general and flag officers on active duty

(a) LIMITATIONS.—The number of general officers on active duty in the Army, Air Force, and Marine Corps, and the number of flag officers on active duty in the Navy, may not exceed the number specified for the armed force concerned as follows:

(1) For the Army, 302.
(2) For the Navy, 216.
(3) For the Air Force, 279.
(4) For the Marine Corps, 80.

(b) LIMITED EXCLUSION FOR JOINT DUTY REQUIREMENTS.—(1) The Chairman of the Joint Chiefs of Staff may designate up to 12 general officer and flag officer positions that are joint duty assignments for purposes of chapter 38 of this title for exclusion from the limitations in subsection (a). Officers in positions so designated shall not be counted for the purposes of those limitations.

(2)(A) The Chairman of the Joint Chiefs of Staff may designate up to 10 general and flag officer positions on the staffs of the commanders of the unified and specified combatant commands as positions to be held only by reserve component officers who are in a general or flag officer grade below lieutenant general or vice admiral. Each position so designated shall be considered to be a joint duty assignment position for purposes of chapter 38 of this title.

(B) A reserve component officer serving in a position designated under subparagraph (A) while on active duty under a call or order to active duty that does not specify a period of 180 days or less shall not be counted for the purposes of the limitations

under subsection (a) and under section 525 of this title if the officer was selected for service in that position in accordance with the procedures specified in subparagraph (C).

(C) Whenever a vacancy occurs, or is anticipated to occur, in a position designated under subparagraph (A)—

(i) the Secretary of Defense shall require the Secretary of the Army to submit the name of at least one Army reserve component officer, the Secretary of the Navy to submit the name of at least one Naval Reserve officer and the name of at least one Marine Corps Reserve officer, and the Secretary of the Air Force to submit the name of at least one Air Force reserve component officer for consideration by the Secretary for assignment to that position; and

(ii) the Chairman of the Joint Chiefs of Staff may submit to the Secretary of Defense the name of one or more officers (in addition to the officers whose names are submitted pursuant to clause (i)) for consideration by the Secretary for assignment to that position.

(D) Whenever the Secretaries of the military departments are required to submit the names of officers under subparagraph (C)(i), the Chairman of the Joint Chiefs of Staff shall submit to the Secretary of Defense the Chairman's evaluation of the performance of each officer whose name is submitted under that subparagraph (and of any officer whose name the Chairman submits to the Secretary under subparagraph (C)(ii) for consideration for the same vacancy).

(E) Subparagraph (B) does not apply in the case of an officer serving in a position designated under subparagraph (A) if the Secretary of Defense, when considering officers for assignment to fill the vacancy in that position which was filled by that officer, did not have a recommendation for that assignment from each Secretary of a military department who (pursuant to subparagraph (C)) was required to make such a recommendation.

(3) This subsection shall cease to be effective on October 1, 2002.

(c) NOTICE TO CONGRESS UPON CHANGE IN GRADE FOR CERTAIN POSITIONS.—(1) Not later than 60 days before an action specified in paragraph (2) may become effective, 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 providing notice of the intended action and an analytically based justification for the intended action.

(2) Paragraph (1) applies in the case of the following actions:

(A) A change in the grade authorized as of July 1, 1994, for a general officer position in the National Guard Bureau, a general or flag officer position in the Office of a Chief of a reserve component, or a general or flag officer position in the headquarters of a reserve component command.

(B) Assignment of a reserve component officer to a general officer position in the National Guard Bureau, to a general or flag officer position in the Office of a Chief of a reserve component, or to a general or flag officer position in the headquarters of a reserve component command in a grade other than the grade authorized for that position as of July 1, 1994.

(C) Assignment of an officer other than a general or flag officer as the military executive to the Reserve Forces Policy Board.

(d) EXCLUSION OF CERTAIN OFFICERS.—The limitations of this section do not apply to a reserve component general or flag officer who is on active duty for training or who is on active duty under a call or order specifying a period of less than 180 days.

(Added P.L. 100–370, § 1(b)(1), July 19, 1988, 102 Stat 840; amended, P.L. 101–510, § 403(a), Nov. 5, 1990, 104 Stat. 1545; P.L. 102–484, § 403, Oct. 23, 1992, 106 Stat. 2398; P.L. 103–337, §§ 404, 512, Oct. 5, 1994, 108 Stat. 2744, 2752; P.L. 104–106, §§ 1502(a)(1), 1503(a)(3), Feb. 10, 1996, 110 Stat. 502, 510; P.L. 104–201, § 405, Sept. 23, 1996, 110 Stat. 2506; P.L. 105–261, § 405, Oct. 17, 1998, 112 Stat. 1996; P.L. 106–65, §§ 553, 1067(1), Oct. 5, 1999, 113 Stat. 615, 774.)

§ 527. Authority to suspend sections 523, 525, and 526 [2]

In time of war, or of national emergency declared by Congress or the President after November 30, 1980, the President may suspend the operation of any provision of section 523, 525, or 526 of this title. So long as such war or national emergency continues, any such suspension may be extended by the President. Any such suspension shall, if not sooner ended, end on the last day of the two-year period beginning on the date on which the suspension (or the last extension thereof) takes effect or on the last day of the one-year period beginning on the date of the termination of the war or national emergency, whichever occurs first. With respect to the end of any such suspension, the preceding sentence supersedes the provisions of title II of the National Emergencies Act (50 U.S.C. 1621–1622) which provide that powers or authorities exercised by reason of a national emergency shall cease to be exercised after the date of the termination of the emergency.

(Added as § 526 P.L. 96–513, § 103, Dec. 12, 1980, 94 Stat. 2845; redesignated § 527 and amended P.L. 100–370, § 1(b)(2), July 19, 1988, 102 Stat. 840; P.L. 103–337, § 1671(c)(4), Oct. 5, 1994, 108 Stat. 3014.)

§ 528. Limitation on number of officers on active duty in grades of general and admiral

(a) LIMITATION.—The total number of officers on active duty in the Army, Air Force, and Marine Corps in the grade of general and in the Navy in the grade of admiral may not exceed 32.

(b) EXCEPTIONS.—(1) The limitation in subsection (a) does not apply in the case of an officer serving in the grade of general or admiral in a position that is specifically exempted by law from being counted for purposes of limitations by law on the total number of officers that may be on active duty in the grades of general and admiral or the number of officers that may be on active duty in that officer's armed force in the grade of general or admiral.

(2) An officer continuing to hold the grade of general or admiral under section 601(b)(4) of this title after relief from the position of Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Com-

[2] By Executive Order 12743 of Jan. 18, 1991, the authority of the President under section 527 to suspend the operation of sections 523–526 was invoked "to the full extent provided by the terms thereof", and the Secretary of Defense was authorized to exercise the authority vested in the President by section 527, with authority for successive redelegation to civilian subordinates who are appointed by the President, by and with the advice and consent of the Senate.

mandant of the Marine Corps shall not be counted for purposes of this section.

(Added P.L. 103–337, § 405(b)(1), Oct. 5, 1994, 108 Stat. 2744; P.L. 104–106, §§ 403(b), 1503(a)(4), Feb. 10, 1996, 110 Stat. 287, 511; P.L. 104–201, § 1074(a)(3), Sept. 23, 1996, 110 Stat. 2658.)

CHAPTER 33—ORIGINAL APPOINTMENTS OF REGULAR OFFICERS IN GRADES ABOVE WARRANT OFFICER GRADES

Sec.
531. Original appointments of commissioned officers.
532. Qualifications for original appointment as a commissioned officer.
533. Service credit upon original appointment as a commissioned officer.
541. Graduates of the United States Military, Naval, and Air Force Academies.

§ 531. Original appointments of commissioned officers

(a) Original appointments in the grades of second lieutenant through colonel in the Regular Army, Regular Air Force, and Regular Marine Corps and in the grades of ensign through captain in the Regular Navy shall be made by the President, by and with the advice and consent of the Senate.

(b) The grade of a person receiving an appointment under this section who at the time of appointment (1) is credited with service under section 533 of this title, and (2) is not a commissioned officer of a reserve component shall be determined under regulations prescribed by the Secretary of Defense based upon the amount of service credited. The grade of a person receiving an appointment under this section who at the time of the appointment is a commissioned officer of a reserve component is determined under section 533(f) of this title.

(Added P.L. 96–513, § 104(a), Dec. 12, 1980, 94 Stat. 2845; amended P.L. 97–22, § 3(a), July 10, 1981, 95 Stat. 124.)

§ 532. Qualifications for original appointment as a commissioned officer

(a) Under regulations prescribed by the Secretary of Defense, an original appointment as a commissioned officer (other than as a commissioned warrant officer) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps may be given only to a person who—

(1) is a citizen of the United States;

(2) is able to complete 20 years of active commissioned service before his fifty-fifth birthday;

(3) is of good moral character;

(4) is physically qualified for active service; and

(5) has such other special qualifications as the Secretary of the military department concerned may prescribe by regulation.

(b)(1) Original appointments in the Regular Army in the Medical Corps or Dental Corps, and original appointments in the Regular Air Force with a view to designation of an officer as a medical or dental officer, may be made in the grades of first lieutenant through colonel. Original appointments in the Regular Navy in the Medical Corps or Dental Corps may be made in the grades of lieu-

tenant (junior grade) through captain. Such appointments may be made only from persons who are qualified doctors of medicine, osteopathy, or dentistry.

(2) To be eligible for an original appointment as a medical officer, a doctor of osteopathy must—

(A) be a graduate of a college of osteopathy whose graduates are eligible to be licensed to practice medicine or surgery in a majority of the States;

(B) be licensed to practice medicine, surgery, or osteopathy in a State or in the District of Columbia;

(C) under regulations prescribed by the Secretary of Defense, have completed a number of years of osteopathic and preosteopathic education equal to the number of years of medical and premedical education prescribed for persons entering recognized schools of medicine who become doctors of medicine and who would be qualified for an original appointment in the grade for which that person is being considered for appointment; and

(D) have such other qualifications as the Secretary of the military department concerned prescribes after considering the recommendations, if any, of the Surgeon General of the armed force concerned.

(c) Original appointments in the Regular Navy or Regular Marine Corps of officers designated for limited duty shall be made under section 5589 or 5596 of this title.

(d)(1) A person receiving an original appointment as a medical or dental officer, as a chaplain, or as an officer designated for limited duty in the Regular Navy or Regular Marine Corps is not subject to clause (2) of subsection (a).

(2) A reserve commissioned officer appointed in a medical skill other than as a medical officer or dental officer (as defined in regulations prescribed by the Secretary of Defense) is not subject to clause (2) of subsection (a).

(e) After September 30, 1996, no person may receive an original appointment as a commissioned officer in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps until that person has completed one year of service on active duty as a commissioned officer (other than a warrant officer) of a reserve component.

(Added P.L. 96–513, § 104(a), Dec. 12, 1980, 94 Stat. 2845; amended P.L. 97–22, § 3(b), July 10, 1981, 95 Stat. 124; P.L. 97–295, § 1(7), Oct. 12, 1982, 96 Stat. 1289; P.L. 102–190, § 501, Dec. 5, 1991, 105 Stat. 1354; P.L. 103–160, § 510, Nov. 30, 1993, 107 Stat. 1648.)

§ 533. Service credit upon original appointment as a commissioned officer

(a)(1) For the purpose of determining the grade and rank within grade of a person receiving an original appointment in a commissioned grade (other than a warrant officer grade) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps, such person shall be credited at the time of such appointment with any active commissioned service (other than service as a commissioned warrant officer) that he performed in any armed force, the National Oceanic and Atmospheric Administration, or the Public Health Service before such appointment.

(2) The Secretary of Defense shall prescribe regulations, which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps, to authorize the Secretary of the military department concerned to limit the amount of prior active commissioned service with which a person receiving an original appointment may be credited under paragraph (1), or to deny any such credit, in the case of a person who at the time of such appointment is credited with constructive service under subsection (b).

(b)(1) Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned shall credit a person who is receiving an original appointment in a commissioned grade (other than a commissioned warrant officer grade) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps and who has advanced education or training or special experience with constructive service for such education, training, or experience as follows:

(A) One year for each year of advanced education beyond the baccalaureate degree level, for persons appointed, designated, or assigned in officer categories requiring such advanced education or an advanced degree as a prerequisite for such appointment, designation, or assignment. In determining the number of years of constructive service to be credited under this clause to officers in any professional field, the Secretary concerned shall credit an officer with, but with not more than, the number of years of advanced education required by a majority of institutions that award degrees in that professional field for completion of the advanced education or award of the advanced degree.

(B)(i) Credit for any period of advanced education in a health profession (other than medicine and dentistry) beyond the baccalaureate degree level which exceeds the basic education criteria for appointment, designation, or assignment, if such advanced education will be directly used by the armed force concerned.

(ii) Credit for experience in a health profession (other than medicine or dentistry), if such experience will be directly used by the armed force concerned.

(C) Additional credit of (i) not more than one year for internship or equivalent graduate medical, dental, or other formal professional training required by the armed forces, and (ii) not more than one year for each additional year of such graduate-level training or experience creditable toward certification in a specialty required by the armed forces.

(D) Additional credit, in unusual cases, based on special experience in a particular field.

(E) Additional credit for experience as a physician or dentist, if appointed as a medical or dental officer in the Army or Navy or, in the case of the Air Force, with a view to designation as a medical or dental officer.

(2) Except as authorized by the Secretary concerned in individual cases and under regulations prescribed by the Secretary of Defense in the case of a medical or dental officer, the amount of constructive service credited an officer under this subsection may not exceed the amount required in order for the officer to be eligi-

ble for an original appointment in the grade of major in the Army, Air Force, or Marine Corps or lieutenant commander in the Navy.

(3) Constructive service credited an officer under this subsection is in addition to any service credited that officer under subsection (a) and shall be credited at the time of the original appointment of the officer.

(c) Constructive service credited an officer under subsection (b) shall be used only for determining the officer's—

(1) initial grade as a regular officer;

(2) rank in grade; and

(3) service in grade for promotion eligibility.

(d)(1) Constructive service may not be credited under subsection (b) for education, training, or experience obtained while serving as a commissioned officer (other than a warrant officer) on active duty or in an active status. However, in the case of an officer who completes advanced education or receives an advanced degree while on active duty or in an active status and in less than the number of years normally required to complete such advanced education or receive such advanced degree, constructive service may, subject to regulations prescribed under subsection (a)(2), be credited to the officer under subsection (b)(1)(A) to the extent that the number of years normally required to complete such advanced education or receive such advanced degree exceeds the actual number of years in which such advanced education or degree is obtained by the officer.

(2) A graduate of the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy is not entitled to service credit under this section for service performed, or education, training, or experience obtained, before graduation from such Academy.

(e) If the Secretary of Defense determines that the number of qualified judge advocates serving on active duty in the Army, Navy, Air Force, or Marine Corps in grades below major or lieutenant commander is critically below the number needed by such armed force in such grades, he may authorize the Secretary of the military department concerned to credit any person receiving an original appointment in the Judge Advocate General's Corps of the Army or Navy, or any person receiving an original appointment in the Air Force or Marine Corps with a view to designation as a judge advocate, with a period of constructive service in such an amount (in addition to any period of service credited such person under subsection (b)(1)) as will result in the grade of such person being that of captain or, in the case of an officer of the Navy, lieutenant and the date of rank of such person being junior to that of all other officers of the same grade serving on active duty.

(f) A reserve officer (other than a warrant officer) who receives an original appointment as an officer (other than as a warrant officer) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps shall—

(1) in the case of an officer on the active-duty list immediately before that appointment as a regular officer, be appointed in the same grade and with the same date of rank as the grade and date of rank held by the officer on the active-duty list immediately before the appointment; and

(2) in the case of an officer not on the active-duty list immediately before that appointment as a regular officer, be appointed in the same grade and with the same date of rank as the grade and date of rank which the officer would have held had the officer been serving on the active-duty list on the date of the appointment as a regular officer.

(Added P.L. 96–513, § 104(a), Dec. 12, 1980, 94 Stat. 2846; amended P.L. 97–22, § 3(c), July 10, 1981, 95 Stat. 125; P.L. 98–94, § 1007(c)(1), Sept. 24, 1983, 97 Stat. 662; P.L. 100–180, § 714(a), Dec. 4, 1987, 101 Stat. 1112; P.L. 103–160, § 509(a), Nov. 30, 1993, 107 Stat. 1647.)

§ 541. Graduates of the United States Military, Naval, and Air Force Academies

(a) Notwithstanding any other provision of law, each cadet at the United States Military Academy or the United States Air Force Academy, and each midshipman at the United States Naval Academy, is entitled, before graduating from that Academy, to state his preference for appointment, upon graduation, as a commissioned officer in either the Army, Navy, Air Force, or Marine Corps.

(b) With the consent of the Secretary of the military department administering the Academy from which the cadet or midshipman is to be graduated, and of the Secretary of the military department having jurisdiction over the armed force for which that graduate stated his preference, the graduate is entitled to be accepted for appointment in that armed force. However, not more than 12½ percent of any graduating class at an Academy may be appointed in armed forces not under the jurisdiction of the military department administering that Academy.

(c) The Secretary of Defense shall, by regulation, provide for the equitable distribution of appointments in cases where more than 12½ percent of the graduating class of any Academy request appointment in armed forces not under the jurisdiction of the military department administering that Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 19.)

CHAPTER 33A—APPOINTMENT, PROMOTION, AND INVOLUNTARY SEPARATION AND RETIREMENT FOR MEMBERS ON THE WARRANT OFFICER ACTIVE-DUTY LIST

Sec.
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§ 571. Warrant officers: grades

(a) The regular warrant officer grades in the armed forces corresponding to the pay grades prescribed for warrant officers by section 201(b) of title 37 are as follows:

Warrant officer grade:

Chief warrant officer, W–5.
Chief warrant officer, W–4.
Chief warrant officer, W–3.
Chief warrant officer, W–2.
Warrant officer, W–1.

(b) Appointments in the grade of regular warrant officer, W–1, shall be made by warrant by the Secretary concerned. Appointments in regular chief warrant officer grades shall be made by commission by the President.

(c) An appointment may not be made in any of the armed forces in the regular warrant officer grade of chief warrant officer, W–5, if the appointment would result in more than 5 percent of the warrant officers of that armed force on active duty being in the grade of chief warrant officer, W–5. In computing the limitation prescribed in the preceding sentence, there shall be excluded warrant officers described in section 582 of this title.

(Added P.L. 102–190, § 1112(a), Dec. 5, 1991, 105 Stat. 1493; amended P.L. 102–484, § 1052(2), Oct. 23, 1992, 106 Stat. 2499; P.L. 103–337, § 541(a)(2), Oct. 5, 1994, 108 Stat. 2764.)

§ 572. Warrant officers: original appointment; service credit

For the purposes of promotion, persons originally appointed in regular or reserve warrant officer grades shall be credited with such service as the Secretary concerned may prescribe. However,

such a person may not be credited with a period of service greater than the period of active service performed in the grade, or pay grade corresponding to the grade, in which so appointed, or in any higher grade or pay grade.

(Added P.L. 102–190, § 1112(a), Dec. 5, 1991, 105 Stat. 1493.)

§ 573. Convening of selection boards

(a)(1) Whenever the Secretary concerned determines that the needs of the service so require, he shall convene a selection board to recommend for promotion to the next higher warrant officer grade warrant officers on the warrant officer active-duty list who are in the grade of chief warrant officer, W–2, chief warrant officer, W–3, or chief warrant officer, W–4.

(2) Warrant officers serving on the warrant officer active-duty list in the grade of warrant officer, W–1, shall be promoted to the grade of chief warrant officer, W–2, in accordance with regulations prescribed by the Secretary concerned. Such regulations shall require that an officer have served not less than 18 months on active duty in the grade of warrant officer, W–1, before promotion to the grade of warrant officer, W–2.

(b) A selection board shall consist of five or more officers who are on the active-duty list of the same armed force as the warrant officers under consideration by the board. At least five members of a selection board must be serving in a permanent grade above major or lieutenant commander. The Secretary concerned may appoint warrant officers, senior in grade to those under consideration, as additional members of the selection board. If warrant officers are appointed members of the selection board and if competitive categories have been established by the Secretary under section 574(b) of this title, at least one must be appointed from each warrant officer competitive category under consideration by the board, unless there is an insufficient number of warrant officers in the competitive category concerned who are senior in grade to those under consideration and qualified, as determined by the Secretary concerned, to be appointed as additional members of the board.

(c) The Secretary concerned may convene selection boards to recommend regular warrant officers for continuation on active duty under section 580 of this title and for retirement under section 581 of this title.

(d) When reserve warrant officers of one of the armed forces are to be considered by a selection board convened under subsection (a), the membership of the board shall, if practicable, include at least one reserve officer of that armed force, with the exact number of reserve officers to be determined by the Secretary concerned.

(e) No officer may serve on two consecutive boards under this section, if the second board considers any warrant officer who was considered by the first board.

(f) The Secretary concerned shall prescribe all other matters relating to the functions and duties of the boards, including the number of members constituting a quorum, and instructions concerning notice of convening of boards and communications with boards.

(Added P.L. 102–190, § 1112(a), Dec. 5, 1991, 105 Stat. 1493; amended P.L. 103–337, § 541(b)(1), Oct. 5, 1994, 108 Stat. 2764; P.L. 104–106, § 1503(a)(5), Feb. 10, 1996, 110 Stat. 511.)

§ 574. Warrant officer active-duty lists; competitive categories; number to be recommended for promotion; promotion zones

(a) The Secretary concerned shall maintain for each armed force under the jurisdiction of that Secretary a single list of all warrant officers (other than warrant officers described in section 582 of this title) who are on active duty.

(b) The Secretary concerned may establish competitive categories for promotion. Warrant officers in the same competitive category shall compete among themselves for promotion.

(c) Before convening a selection board under section 573 of this title, the Secretary concerned shall determine for each grade (or grade and competitive category) to be considered by the board the following:

(1) The maximum number of warrant officers to be recommended for promotion.

(2) A promotion zone for warrant officers on the warrant officer active-duty list.

(d) The position of a warrant officer on the warrant officer active-duty list shall be determined as follows:

(1) Warrant officers shall be carried in the order of seniority of the grade in which they are serving on active duty.

(2) Warrant officers serving in the same grade shall be carried in the order of their rank in that grade.

(3) A warrant officer on the warrant officer active-duty list who receives a temporary appointment or a temporary assignment in a grade other than a warrant officer grade or chief warrant officer grade shall retain his position on the warrant officer active-duty list while so serving.

(e) A chief warrant officer may not be considered for promotion to the next higher grade under this chapter until the officer has completed two years of service on active duty in the grade in which the officer is serving.

(Added P.L. 102–190, § 1112(a), Dec. 5, 1991, 105 Stat. 1494; amended P.L. 102–484, § 1052(3), Oct. 23, 1992, 106 Stat. 2492; P.L. 103–337, § 541(b)(2), Oct. 5, 1994, 108 Stat. 2764; P.L. 104–201, § 506(a), Sept. 23, 1996, 110 Stat. 2512.)

§ 575. Recommendations for promotion by selection boards

(a) A selection board convened under section 573(a) of this title shall recommend for promotion to the next higher grade those warrant officers considered by the board whom the board, giving due consideration to the needs of the armed force concerned for warrant officers with particular skills, considers best qualified for promotion within each grade (or grade and competitive category) considered by the board.

(b)(1) In the case of a selection board to consider warrant officers for selection for promotion to the grade of chief warrant officer,

W–3, chief warrant officer, W–4, or chief warrant officer, W–5, the Secretary concerned shall establish the number of warrant officers that the selection board may recommend from among warrant officers being considered from below the promotion zone within each grade (or grade and competitive category). The number of warrant officers recommended for promotion from below the promotion zone does not increase the maximum number of warrant officers which the board is authorized under section 574 of this title to recommend for promotion.

(2) The number of officers recommended for promotion from below the promotion zone may not exceed 10 percent of the total number recommended, except that the Secretary of Defense and the Secretary of Transportation, when the Coast Guard is not operating as a service in the Navy, may authorize such percentage to be increased to not more than 15 percent. If the number determined under this subsection with respect to a promotion zone within a grade (or grade and competitive category) is less than one, the board may recommend one such officer for promotion from below the zone within that grade (or grade and competitive category).

(c) A selection board convened under section 573(a) of this title may not recommend a warrant officer for promotion unless—

(1) the officer receives the recommendation of a majority of the members of the board; and

(2) a majority of the members of the board find that the officer is fully qualified for promotion.

(d) Each time a selection board is convened under section 573(a) of this title to consider warrant officers in a competitive category for promotion to the next higher grade, each warrant officer in the promotion zone, and each warrant officer above the promotion zone, for the grade and competitive category under consideration (except for a warrant officer precluded from consideration under regulations prescribed by the Secretary concerned under section 577 of this title) shall be considered for promotion.

(Added P.L. 102–190, § 1112(a), Dec. 5, 1991, 105 Stat. 1495; amended P.L. 103–337, §§ 501(a), 541(b)(3), Oct. 5, 1994, 108 Stat. 2748, 2764; P.L. 104–201, § 506(b), Sept. 23, 1996, 110 Stat. 2512; P.L. 106–65, § 505, Oct. 5, 1999, 113 Stat. 591.)

§ 576. Information to be furnished to selection boards; selection procedures

(a) The Secretary concerned shall furnish to each selection board convened under section 573 of this title the following:

(1) The maximum number of warrant officers that may be recommended for promotion from those serving in any grade (or grade and competitive category) to be considered, as determined in accordance with section 574 of this title.

(2) The names and pertinent records of all officers in each grade (or grade and competitive category) to be considered.

(3) Such information or guidelines relating to the needs of the armed force concerned for warrant officers having particular skills, including guidelines or information relating to the need for either a minimum number or a maximum number of officers with particular skills within a grade or competitive

category, as the Secretary concerned determines to be relevant in relation to the requirements of that armed force.

(b) From each promotion zone for a grade (or grade and competitive category), the selection board shall recommend for promotion to the next higher warrant officer grade those warrant officers whom it considers best qualified for promotion, but no more than the number specified by the Secretary concerned.

(c) The names of warrant officers selected for promotion under this section shall be arranged in the board's report in order of the seniority on the warrant officer active-duty list.

(d) Under such regulations as the Secretary concerned may prescribe, the selection board shall report the names of those warrant officers considered by it whose records establish, in its opinion, their unfitness or unsatisfactory performance. A regular warrant officer whose name is so reported shall be considered, under regulations provided by the Secretary concerned, for retirement or separation under section 1166 of this title.

(e) The report of the selection board shall be submitted to the Secretary concerned. The Secretary may approve or disapprove all or part of the report.

(f)(1) Upon receipt of the report of a selection board submitted to him under subsection (e), the Secretary concerned shall review the report to determine whether the board has acted contrary to law or regulation or to guidelines furnished the board under this section.

(2) If, on the basis of a review of the report under paragraph (1), the Secretary concerned determines that the board acted contrary to law or regulation or to guidelines furnished the board under this section, the Secretary shall return the report, together with a written explanation of the basis for such determination, to the board for further proceedings. Upon receipt of a report returned by the Secretary concerned under this paragraph, the selection board (or a subsequent selection board convened under section 573 of this title for the same grade and competitive category) shall conduct such proceedings as may be necessary in order to revise the report to be consistent with law, regulation, and such guidelines and shall resubmit the report, as revised, to the Secretary in accordance with subsection (e).

(Added P.L. 102–190, § 1112(a), Dec. 5, 1991, 105 Stat. 1496; amended P.L. 103–337, §§ 501(b), 541(b)(4), Oct. 5, 1994, 108 Stat. 2748, 2764.)

§ 577. Promotions: effect of failure of selection for

A warrant officer who has been considered for promotion by a selection board convened under section 573 of this title, but not selected, shall be considered for promotion by each subsequent selection board that considers officers in his grade (or grade and competitive category) until he is retired or separated or he is selected for promotion. However, the Secretary concerned may, by regulation, preclude from consideration by a selection board by which he would otherwise be eligible to be considered, a warrant officer who has an established separation date that is within 90 days after the date on which the board is convened.

(Added P.L. 102–190, § 1112(a), Dec. 5, 1991, 105 Stat. 1497.)

§ 578. Promotions: how made; effective date

(a) When the report of a selection board convened under this chapter is approved by the Secretary concerned, the Secretary shall place the names of the warrant officers approved for promotion on a single promotion list for each grade (or grade and competitive category), in the order of the seniority of such officers on the warrant officer active-duty list.

(b) Promotions of warrant officers on the warrant officer promotion list shall be made when, in accordance with regulations issued by the Secretary concerned, additional warrant officers in that grade (or grade and competitive category), are needed.

(c) A regular warrant officer who is promoted is appointed in the regular grade to which promoted, and a reserve warrant officer who is promoted is appointed in the reserve grade to which promoted. The date of appointment in that grade and date of rank shall be prescribed by the Secretary concerned. A warrant officer is entitled to the pay and allowances for the grade to which appointed from the date specified in the appointment order.

(d) Promotions shall be made in the order in which the names of warrant officers appear on the promotion list and after warrant officers previously selected for promotion in the applicable grade (or grade and competitive category) have been promoted.

(e) A warrant officer who is appointed to a higher grade under this section is considered to have accepted such appointment on the date on which the appointment is made unless the officer expressly declines the appointment.

(f) A warrant officer who has served continuously as an officer since subscribing to the oath of office prescribed in section 3331 of title 5 is not required to take a new oath upon appointment to a higher grade under this section.

(Added P.L. 102–190, § 1112(a), Dec. 5, 1991, 105 Stat. 1497; amended P.L. 102–484, § 1052(6)(B), Oct. 23, 1992, 106 Stat. 2499; P.L. 103–337, § 501(c), Oct. 5, 1994, 108 Stat. 2748.)

§ 579. Removal from a promotion list

(a) The name of a warrant officer recommended for promotion by a selection board convened under this chapter may be removed from the report of the selection board by the President.

(b) The Secretary concerned may remove the name of a warrant officer who is on a promotion list as a result of being recommended for promotion by a selection board convened under this chapter at any time before the promotion is effective.

(c) An officer whose name is removed from the list of officers recommended for promotion by a selection board continues to be eligible for consideration for promotion.

(d) If the next selection board that considers the warrant officer for promotion under this chapter selects the warrant officer for promotion and the warrant officer is promoted, the Secretary concerned may, upon his promotion, grant him the same effective date for pay and allowances and the same date of rank, and the same position on the warrant officer active-duty list as the warrant officer would have had if his name had not been so removed.

(e) If the next selection board does not select the warrant officer for promotion, or if his name is again removed under subsection (a) from the list of officers recommended for promotion by the selec-

tion board or under subsection (b) from the warrant officer promotion list, he shall be treated for all purposes as if he has twice failed of selection for promotion.

(Added P.L. 102–190, § 1112(a), Dec. 5, 1991, 105 Stat. 1497.)

§ 580. Regular warrant officers twice failing of selection for promotion: involuntary retirement or separation

(a)(1) Unless retired or separated sooner under some other provision of law, a regular chief warrant officer who has twice failed of selection for promotion to the next higher regular warrant officer grade shall be retired under paragraph (2) or (3) or separated from active duty under paragraph (4).

(2) If a warrant officer described in paragraph (1) has more than 20 years of creditable active service on (A) the date on which the Secretary concerned approves the report of the board under section 576(e) of this title, or (B) the date on which his name was removed from the recommended list under section 579 of this title, whichever applies, the warrant officer shall be retired. The date of such retirement shall be not later than the first day of the seventh calendar month beginning after the applicable date under the preceding sentence, except as provided by section 8301 of title 5. A warrant officer retired under this paragraph shall receive retired pay computed under section 1401 of this title.

(3) If a warrant officer described in paragraph (1) has at least 18 but not more than 20 years of creditable active service on (A) the date on which the Secretary concerned approves the report of the board under section 576(e) of this title, or (B) the date on which his name was removed from the recommended list under section 579 of this title, whichever applies, the warrant officer shall be retired not later than the date determined under the next sentence unless he is selected for promotion to the next higher regular warrant officer grade before that date. The date of the retirement of a warrant officer under the preceding sentence shall be on a date specified by the Secretary concerned, but not later than the first day of the seventh calendar month beginning after the date upon which he completes 20 years of active service, except as provided by section 8301 of title 5. A warrant officer retired under this paragraph shall receive retired pay computed under section 1401 of this title.

(4)(A) If a warrant officer described in paragraph (1) has less than 18 years of creditable active service on (i) the date on which the Secretary concerned approves the report of the board under section 576(e) of this title, or (ii) the date on which his name was removed from the recommended list under section 579 of this title, whichever applies, the warrant officer shall be separated (except as provided in subparagraph (C)). The date of such separation shall be not later than the first day of the seventh calendar month beginning after the applicable date under the preceding sentence.

(B) A warrant officer separated under this paragraph shall receive separation pay computed under section 1174 of this title, or severance pay computed under section 286a of title 14, as appropriate, except in a case in which—

(i) upon his request and in the discretion of the Secretary concerned, he is enlisted in the grade prescribed by the Secretary; or

(ii) he is serving on active duty in a grade above chief warrant officer, W–5, and he elects, with the consent of the Secretary concerned, to remain on active duty in that status.

(C) If on the date on which a warrant officer is to be separated under subparagraph (A) the warrant officer has at least 18 years of creditable active service, the warrant officer shall be retained on active duty until retired under paragraph (3) in the same manner as if the warrant officer had had at least 18 years of service on the applicable date under subparagraph (A) or (B) of that paragraph.

(5) A warrant officer who is subject to retirement or discharge under this subsection is not eligible for further consideration for promotion.

(6) In this subsection, the term "creditable active service" means active service that could be credited to a warrant officer under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114).

(b) The Secretary concerned may defer, for not more than four months, the retirement or separation under this section of a warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date on which he would otherwise be required to retire or be separated under this section.

(c) The Secretary concerned may defer, until such date as he prescribes, the retirement under subsection (a) of a warrant officer who is serving on active duty in a grade above chief warrant officer, W–5, and who elects to continue to so serve.

(d) If a warrant officer who also holds a grade above chief warrant officer, W–5, is retired or separated under subsection (a), his commission in the higher grade shall be terminated on the date on which he is so retired or separated.

(e)(1) A regular warrant officer subject to discharge or retirement under this section may, subject to the needs of the service, be continued on active duty if he is selected for continuation on active duty by a selection board convened under section 573(c) of this title.

(2) A warrant officer who is selected for continuation on active duty under this subsection but declines to continue on active duty shall be discharged, retired, or retained on active duty, as appropriate, in accordance with this section.

(3) Each warrant officer who is continued on active duty under this subsection, not subsequently promoted or continued on active duty, and not on a list of warrant officers recommended for continuation or for promotion to the next higher regular grade shall, unless sooner retired or discharged under another provision of law—

(A) be discharged upon the expiration of his period of continued service; or

(B) if he is eligible for retirement under any provision of law, be retired under that law on the first day of the first

month following the month in which he completes his period of continued service.

Notwithstanding subparagraph (A), a warrant officer who would otherwise be discharged under such subparagraph and who is within two years of qualifying for retirement under section 1293 of this title shall, unless he is sooner retired or discharged under some other provision of law, be retained on active duty until he is qualified for retirement under that section and then be retired.

(4) The retirement or discharge of a warrant officer pursuant to this subsection shall be considered to be an involuntary retirement or discharge for purposes of any other provision of law.

(5) Continuation of a warrant officer on active duty under this subsection pursuant to the action of a selection board convened under section 573(c) of this title is subject to the approval of the Secretary concerned.

(6) The Secretary of Defense and the Secretary of Transportation, when the Coast Guard is not operating as a service in the Navy, shall prescribe regulations for the administration of this subsection.

(Added P.L. 102–190, § 1112(a), Dec. 5, 1991, 105 Stat. 1498; amended P.L. 103–160, § 505(a), Nov. 30, 1993, 107 Stat. 1645; P.L. 103–337, § 541(b)(5), Oct. 5, 1994, 108 Stat. 2765.)

§ 580a. Enhanced authority for selective early discharges

(a) The Secretary of Defense may authorize the Secretary of a military department, during the period beginning on November 30, 1993, and ending on October 1, 1999, to take the action set forth in subsection (b) with respect to regular warrant officers of an armed force under the jurisdiction of that Secretary.

(b) The Secretary of a military department may, with respect to regular warrant officers of an armed force, when authorized to do so under subsection (a), convene selection boards under section 573(c) of this title to consider for discharge regular warrant officers on the warrant officer active-duty list—

(1) who have served at least one year of active duty in the grade currently held;

(2) whose names are not on a list of warrant officers recommended for promotion; and

(3) who are not eligible to be retired under any provision of law and are not within two years of becoming so eligible.

(c)(1) In the case of an action under subsection (b), the Secretary of the military department concerned may submit to a selection board convened pursuant to that subsection—

(A) the names of all regular warrant officers described in that subsection in a particular grade and competitive category; or

(B) the names of all regular warrant officers described in that subsection in a particular grade and competitive category who also are in particular year groups or specialties, or both, within that competitive category.

(2) The Secretary concerned shall specify the total number of warrant officers to be recommended for discharge by a selection board convened pursuant to subsection (b). That number may not be more than 30 percent of the number of officers considered—

(A) in each grade in each competitive category; or

(B) in each grade, year group, or specialty (or combination thereof) in each competitive category.

(3) The total number of regular warrant officers described in subsection (b) from any of the armed forces (or from any of the armed forces in a particular grade) who may be recommended during a fiscal year for discharge by a selection board convened pursuant to the authority of that subsection may not exceed 70 percent of the decrease, as compared to the preceding fiscal year, in the number of warrant officers of that armed force (or the number of warrant officers of that armed force in that grade) authorized to be serving on active duty as of the end of that fiscal year.

(4) A warrant officer who is recommended for discharge by a selection board convened pursuant to subsection (b) and whose discharge is approved by the Secretary concerned shall be discharged on a date specified by the Secretary concerned.

(5) Selection of warrant officers for discharge under this subsection shall be based on the needs of the service.

(d) The discharge of any warrant officer pursuant to this section shall be considered involuntary for purposes of any other provision of law.

(e) This section applies to the Secretary of Transportation in the same manner and to the same extent as it applies to the Secretary of Defense. The Commandant of the Coast Guard shall take the action set forth in subsection (b) with respect to regular warrant officers of the Coast Guard.

(Added P.L. 103–160, § 504(a), Nov. 30, 1993, 107 Stat. 1644; amended P.L. 103–337, §§ 541(g), 1070(a)(3), Oct. 5, 1994, 108 Stat. 2767, 2855.)

§ 581. Selective retirement

(a) A regular warrant officer who holds a warrant officer grade above warrant officer, W–1, and whose name is not on a list of warrant officers recommended for promotion and who is eligible to retire under any provision of law may be considered for retirement by a selection board convened under section 573(c) of this title. The Secretary concerned shall specify the maximum number of warrant officers that such a board may recommend for retirement.

(b) A warrant officer who is recommended for retirement under this section and whose retirement is approved by the Secretary concerned shall be retired, under any provision of law under which he is eligible to retire, on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the Secretary concerned approves the report of the board which recommended the officer for retirement.

(c) The retirement of a warrant officer pursuant to this section shall be considered to be an involuntary retirement for purposes of any other provision of law.

(d)(1) The Secretary concerned shall prescribe regulations for the administration of this section. Such regulations shall require that when the Secretary concerned submits a list of regular warrant officers to a selection board convened under section 573(c) of this title to consider regular warrant officers for selection for retirement under this section, the list shall include each warrant officer on the active-duty list in the same grade or same grade and com-

petitive category whose position on the active-duty list is between that of the most junior regular warrant officer in that grade whose name is submitted to the board and that of the most senior regular warrant officer in that grade whose name is submitted to the board.

(2) Such regulations shall establish procedures to exclude from consideration by the board any warrant officer who has been approved for voluntary retirement, or who is to be mandatorily retired under any other provision of law, during the fiscal year in which the board is convened or during the following fiscal year. An officer not considered by a selection board convened under section 573(c) of this title under such regulations because the officer has been approved for voluntary retirement shall be retired on the date approved for the retirement of such officer as of the convening date of such selection board unless the Secretary concerned approves a modification of such date in order to prevent a personal hardship for the officer or for other humanitarian reasons.

(e) The Secretary concerned may defer for not more than 90 days the retirement of an officer otherwise approved for early retirement under this section in order to prevent a personal hardship to the officer or for other humanitarian reasons. Any such deferral shall be made on a case-by-case basis considering the circumstances of the case of the particular officer concerned. The authority of the Secretary to grant such a deferral may not be delegated.

(Added P.L. 102–190, § 1112(a), Dec. 5, 1991, 105 Stat. 1500; amended P.L. 102–484, § 1052(5), Oct. 23, 1992, 106 Stat. 2499; P.L. 103–337, § 541(b)(6), Oct. 5, 1994, 108 Stat. 2765; P.L. 104–106, § 504(a), Feb. 10, 1996, 110 Stat. 295.)

§ 582. Warrant officer active-duty list: exclusions

Warrant officers in the following categories are not subject to this chapter:

(1) Reserve warrant officers—

(A) on active duty for training;

(B) on active duty under section 12301(d) of this title in connection with organizing, administering, recruiting, instructing, or training the reserve components;

(C) on active duty to pursue special work;

(D) ordered to active duty under section 12304 of this title; or

(E) on full-time National Guard duty.

(2) Retired warrant officers on active duty (other than retired warrant officers who were recalled to active duty before February 1, 1992, and have served continuously on active duty since that date).

(3) Students enrolled in the Army Physician's Assistant Program.

(Added P.L. 102–190, § 1112(a), Dec. 5, 1991, 105 Stat. 1500; amended P.L. 103–337, § 501(d), Oct. 5, 1994, 108 Stat. 2748; P.L. 104–106, § 1501(c)(5), Feb. 10, 1996, 110 Stat. 498.)

§ 583. Definitions

In this chapter:

(1) The term "promotion zone" means a promotion eligibility category consisting of officers on a warrant officer active-

duty list in the same grade (or the same grade and competitive category) who—

(A) in the case of grades below chief warrant officer, W–5, have neither (i) failed of selection for promotion to the next higher grade, nor (ii) been removed from a list of warrant officers recommended for promotion to that grade (other than after having been placed on that list after a selection from below the promotion zone); and

(B) are senior to the warrant officer designated by the Secretary concerned to be the junior warrant officer in the promotion zone eligible for promotion to the next higher grade.

(2) The term "warrant officers above the promotion zone" means a group of officers on a warrant officer active-duty list in the same grade (or the same grade and competitive category) who—

(A) are eligible for consideration for promotion to the next higher grade;

(B) are in the same grade as warrant officers in the promotion zone; and

(C) are senior to the senior warrant officer in the promotion zone.

(3) The term "warrant officers below the promotion zone" means a group of officers on a warrant officer active-duty list in the same grade (or the same grade and competitive category) who—

(A) are eligible for consideration for promotion to the next higher grade;

(B) are in the same grade as warrant officers in the promotion zone; and

(C) are junior to the junior warrant officer in the promotion zone.

(4) The active-duty list referred to in section 573(b) of this title includes the active-duty promotion list established by section 41a of title 14.

(Added P.L. 102–190, § 1112(a), Dec. 5, 1991, 105 Stat. 1501; amended P.L. 103–337, § 541(f)(7), Oct. 5, 1994, 108 Stat. 2767.)

CHAPTER 34—APPOINTMENTS AS RESERVE OFFICERS

Sec.
591. Reference to chapters 1205 and 1207.
[592 to 600a. Transferred.]

§ 591. Reference to chapters 1205 and 1207

Provisions of law relating to appointments of reserve officers other than warrant officers are set forth in chapter 1205 of this title (beginning with section 12201). Provisions of law relating to appointments and promotion of reserve warrant officers are set forth in chapter 1207 (beginning with section 12241).

(Added P.L. 103–337, § 1662(d)(3), Oct. 5, 1994, 108 Stat. 2991.)

[Former § 591 and §§ 592 to 600a transferred to §§ 12201 to 12210]

CHAPTER 35—TEMPORARY APPOINTMENTS IN OFFICER GRADES

Sec.
601. Positions of importance and responsibility: generals and lieutenant generals; admirals and vice admirals.
[602. Repealed.]
603. Appointments in time of war or national emergency.
604. Senior joint officer positions: recommendations to the Secretary of Defense.

§ 601. Positions of importance and responsibility: generals and lieutenant generals; admirals and vice admirals

(a) The President may designate positions of importance and responsibility to carry the grade of general or admiral or lieutenant general or vice admiral. The President may assign to any such position an officer of the Army, Navy, Air Force, or Marine Corps who is serving on active duty in any grade above colonel or, in the case of an officer of the Navy, any grade above captain. An officer assigned to any such position has the grade specified for that position if he is appointed to that grade by the President, by and with the advice and consent of the Senate. Except as provided in subsection (b), the appointment of an officer to a grade under this section for service in a position of importance and responsibility ends on the date of the termination of the assignment of the officer to that position.

(b) An officer who is appointed to the grade of general, admiral, lieutenant general, or vice admiral for service in a position designated under subsection (a) or by law to carry that grade shall continue to hold that grade—

(1) while serving in that position;

(2) while under orders transferring him to another position designated under subsection (a) or by law to carry one of those grades, beginning on the day his assignment to the first position is terminated and ending on the day before the day on which he assumes the second position;

(3) while hospitalized, beginning on the day of the hospitalization and ending on the day he is discharged from the hospital, but not for more than 180 days; and

(4) while awaiting retirement, beginning on the day he is relieved from the position designated under subsection (a) or by law to carry one of those grades and ending on the day before his retirement, but not for more than 60 days.

(c)(1) An appointment of an officer under subsection (a) does not vacate the permanent grade held by the officer.

(2) An officer serving in a grade above major general or rear admiral who holds the permanent grade of brigadier general or rear admiral (lower half) shall be considered for promotion to the

permanent grade of major general or rear admiral, as appropriate, as if he were serving in his permanent grade.

(d)(1) When an officer is recommended to the President for an initial appointment to the grade of lieutenant general or vice admiral, or for an initial appointment to the grade of general or admiral, the Chairman of the Joint Chiefs of Staff shall submit to the Secretary of Defense the Chairman's evaluation of the performance of that officer as a member of the Joint Staff and in other joint duty assignments. The Secretary of Defense shall submit the Chairman's evaluation to the President at the same time the recommendation for the appointment is submitted to the President.

(2) Whenever a vacancy occurs in a position within the Department of Defense that the President has designated as a position of importance and responsibility to carry the grade of general or admiral or lieutenant general or vice admiral or in an office that is designated by law to carry such a grade, the Secretary of Defense shall inform the President of the qualifications needed by an officer serving in that position or office to carry out effectively the duties and responsibilities of that position or office.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2849; amended P.L. 97–86, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; P.L. 98–525, § 523, Oct. 19, 1984, 98 Stat. 2523; P.L. 99–433, § 403, Oct. 1, 1986, 100 Stat. 1031; P.L. 102–190, § 502(a), Dec. 5, 1991, 105 Stat. 1354; P.L. 104–106, § 403(c), Feb. 10, 1996, 110 Stat. 287.)

[§ 602. Repealed. P.L. 102–190, § 1113(a), Dec. 5, 1991, 105 Stat. 1502]

§ 603. Appointments in time of war or national emergency.

(a) In time of war, or of national emergency declared by the Congress or the President after November 30, 1980, the President may appoint any qualified person (whether or not already a member of the armed forces) to any officer grade in the Army, Navy, Air Force, or Marine Corps, except that appointments under this section may not be made in grades above major general or rear admiral. Appointments under this section shall be made by the President alone, except that an appointment in the grade warrant officer, W–1, shall be made by warrant by the Secretary concerned.

(b) Any appointment under this section is a temporary appointment and may be vacated by the President at any time.

(c)(1) Any person receiving an original appointment under this section is entitled to service credit as authorized under section 533 of this title.

(2) An appointment under this section of a person who is not on active duty becomes effective when that person begins active duty under that appointment.

(d) An appointment under this section does not change the permanent status of a member of the armed forces so appointed. A member who is appointed under this section shall not incur any reduction in the pay and allowances to which the member was entitled, by virtue of his permanent status, at the time of his appointment under this section.

(e)(1) An officer who receives an appointment to a higher grade under this section is considered to have accepted such appointment on the date of the order announcing the appointment unless he expressly declines the appointment.

(2) An officer who has served continuously since he subscribed to the oath of office prescribed in section 3331 of title 5 is not required to take a new oath upon appointment to a higher grade under this section.

(f) Unless sooner terminated, an appointment under this section terminates on the earliest of the following:

(1) The second anniversary of the appointment.

(2) The end of the six-month period beginning on the last day of the war or national emergency during which the appointment was made.

(3) The date the person appointed is released from active duty.

(Added P.L. 96–513, § 105, Dec. 12. 1980, 94 Stat. 2850; amended P.L. 101–189, § 653(a)(2), Nov. 29, 1989, 103 Stat. 1462; P.L. 102–190, § 1113(b), (d), Dec. 5, 1991, 105 Stat. 1502.)

§ 604. Senior joint officer positions: recommendations to the Secretary of Defense

(a) JOINT 4-STAR OFFICER POSITIONS.—(1) Whenever a vacancy occurs, or is anticipated to occur, in a position specified in subsection (b)—

(A) the Secretary of Defense shall require the Secretary of the Army to submit the name of at least one Army officer, the Secretary of the Navy to submit the name of at least one Navy officer and the name of at least one Marine Corps officer, and the Secretary of the Air Force to submit the name of at least one Air Force officer for consideration by the Secretary for recommendation to the President for appointment to that position; and

(B) the Chairman of the Joint Chiefs of Staff may submit to the Secretary of Defense the name of one or more officers (in addition to the officers whose names are submitted pursuant to subparagraph (A)) for consideration by the Secretary for recommendation to the President for appointment to that position.

(2) Whenever the Secretaries of the military departments are required to submit the names of officers under paragraph (1)(A), the Chairman of the Joint Chiefs of Staff shall submit to the Secretary of Defense the Chairman's evaluation of the performance of each officer whose name is submitted under that paragraph (and of any officer whose name the Chairman submits to the Secretary under paragraph (1)(B) for consideration for the same vacancy). The Chairman's evaluation shall primarily consider the performance of the officer as a member of the Joint Staff and in other joint duty assignments, but may include consideration of other aspects of the officer's performance as the Chairman considers appropriate.

(b) COVERED POSITIONS.—Subsection (a) applies to the following positions:

(1) Commander of a combatant command.

(2) Commander, United States Forces, Korea.

(3) Deputy commander, United States European Command, but only if the commander of that command is also the Supreme Allied Commander, Europe.

(c) EXPIRATION.—This section shall cease to be effective at the end of September 30, 2003.

(Added P.L. 103–337, § 405(c), Oct. 5, 1994, 108 Stat. 2745; amended P.L. 104–201, § 404(a), Sept. 23, 1996, 110 Stat. 2506; P.L. 106–65, § 509(a), Oct. 5, 1999, 113 Stat. 592.)

CHAPTER 36—PROMOTION, SEPARATION, AND INVOLUNTARY RETIREMENT OF OFFICERS ON THE ACTIVE-DUTY LIST

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SUBCHAPTER I—SELECTION BOARDS

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§ 611. Convening of selection boards

(a) Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned, whenever the needs of the service require, shall convene selection boards to recommend for promotion to the next higher permanent grade, under subchapter II of this chapter, officers on the active-duty list in each permanent grade from first lieutenant through brigadier general in the Army, Air Force, or Marine Corps and from lieutenant (junior grade) through rear admiral (lower half) in the Navy.

(b) Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned, whenever the needs of the service require, may convene selection boards to recommend officers for continuation on active duty under section 637 of this title or for early retirement under section 638 of this title.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2851; amended P.L. 97–86, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; P.L. 99–145, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628.)

§ 612. Composition of selection boards

(a)(1) Members of selection boards shall be appointed by the Secretary of the military department concerned in accordance with this section. A selection board shall consist of five or more officers of the same armed force as the officers under consideration by the board. Each member of a selection board (except as provided in paragraphs (2), (3), and (4)) shall be an officer on the active-duty list. Each member of a selection board must be serving in a grade higher than the grade of the officers under consideration by the board, except that no member of a board may be serving in a grade below major or lieutenant commander.

(2)(A) Except as provided in subparagraph (B), a selection board shall include at least one officer from each competitive category of officers to be considered by the board.

(B) A selection board need not include an officer from a competitive category to be considered by the board when there are no officers of that competitive category on the active-duty list in a grade higher than the grade of the officers to be considered by the board and eligible to serve on the board. However, in such a case the Secretary of the military department concerned, in his discretion, may appoint as a member of the board an officer of that competitive category who is not on the active-duty list from among officers of the same armed force as the officers under consideration by the board who hold a higher grade than the grade of the officers under consideration and who are retired officers, reserve officers serving on active duty but not on the active-duty list, or members of the Ready Reserve.

(3) When reserve officers of an armed force are to be considered by a selection board, the membership of the board shall include at least one reserve officer of that armed force on active duty (whether or not on the active-duty list). The actual number of reserve officers shall be determined by the Secretary of the military department concerned, in the Secretary's discretion. Notwithstanding the first sentence of this paragraph, in the case of a board which is considering officers in the grade of colonel or brigadier general or, in the case of officers of the Navy, captain or rear admiral (lower half), no reserve officer need be included if there are no reserve officers of that armed force on active duty in the next higher grade who are eligible to serve on the board.

(4) Except as provided in paragraphs (2) and (3), if qualified officers on the active-duty list are not available in sufficient number to comprise a selection board, the Secretary of the military department concerned shall complete the membership of the board by appointing as members of the board officers who are members of the same armed force and hold a grade higher than the grade of the officers under consideration by the board and who are retired officers, reserve officers serving on active duty but not on the active-duty list, or members of the Ready Reserve.

(5) A retired general or flag officer who is on active duty for the purpose of serving on a selection board shall not, while so serving, be counted against any limitation on the number of general and flag officers who may be on active duty.

(b) No officer may be a member of two successive selection boards convened under section 611(a) of this title for the consideration of officers of the same competitive category and grade.

(c) Each selection board convened under section 611(a) of this title that will consider officers who are serving in, or have served in, joint duty assignments shall include at least one officer designated by the Chairman of the Joint Chiefs of Staff who is currently serving in a joint duty assignment. The Secretary of Defense may waive the preceding sentence in the case of any selection board of the Marine Corps.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2851; amended P.L. 97–22, § 4(a), July 10, 1981, 95 Stat. 125; P.L. 97–86, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; P.L. 99–145, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628; P.L. 99–433, § 402(a), Oct. 1, 1986, 100 Stat. 1030; P.L. 106–398, § 1[504(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–101.)

§ 613. Oath of members of selection boards

Each member of a selection board shall swear that he will perform his duties as a member of the board without prejudice or partiality and having in view both the special fitness of officers and the efficiency of his armed force.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2851.)

§ 614. Notice of convening of selection boards

(a) At least 30 days before a selection board is convened under section 611(a) of this title to recommend officers in a grade for promotion to the next higher grade, the Secretary concerned (1) shall notify in writing the officers eligible for consideration for promotion of the date on which the board is to convene and the name and date of rank of the junior officer, and of the senior officer, in the promotion zone as of the date of the notification, or (2) shall issue a general written notice to the armed force concerned regarding the convening of the board which shall include the convening date of the board and the name and date of rank of the junior officer, and of the senior officer, in the promotion zone as of the date of the notification.

(b) An officer eligible for consideration by a selection board convened under section 611(a) of this title may send a written communication to the board, to arrive not later than the date the board convenes, calling attention to any matter concerning himself that the officer considers important to his case. The selection board shall give consideration to any timely communication under this subsection.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2852; amended P.L. 97–22, § 4(b), July 10, 1981, 95 Stat. 126; P.L. 102–190, § 504(a)(2)(A), Dec. 5, 1991, 105 Stat. 1357.)

§ 615. Information furnished to selection boards

(a)(1) The Secretary of Defense shall prescribe regulations governing information furnished to selection boards convened under section 611(a) of this title. Those regulations shall apply uniformly among the military departments. Any regulations prescribed by the Secretary of a military department to supplement those regulations may not take effect without the approval of the Secretary of Defense in writing.

(2) No information concerning a particular eligible officer may be furnished to a selection board except for the following:

(A) Information that is in the officer's official military personnel file and that is provided to the selection board in accordance with the regulations prescribed by the Secretary of Defense pursuant to paragraph (1).

(B) Other information that is determined by the Secretary of the military department concerned, after review by that Secretary in accordance with standards and procedures set out in the regulations prescribed by the Secretary of Defense pursuant to paragraph (1), to be substantiated, relevant information that could reasonably and materially affect the deliberations of the selection board.

(C) Subject to such limitations as may be prescribed in those regulations, information communicated to the board by the officer in accordance with this section, section 614(b) of this

title (including any comment on information referred to in subparagraph (A) regarding that officer), or other applicable law.

(D) A factual summary of the information described in subparagraphs (A), (B), and (C) that, in accordance with the regulations prescribed pursuant to paragraph (1), is prepared by administrative personnel for the purpose of facilitating the work of the selection board.

(3) Information provided to a selection board in accordance with paragraph (2) shall be made available to all members of the board and shall be made a part of the record of the board. Communication of such information shall be in a written form or in the form of an audio or video recording. If a communication is in the form of an audio or video recording, a written transcription of the recording shall also be made a part of the record of the selection board.

(4) Paragraphs (2) and (3) do not apply to the furnishing of appropriate administrative processing information to the selection board by administrative staff designated to assist the board, but only to the extent that oral communications are necessary to facilitate the work of the board.

(5) Information furnished to a selection board that is described in subparagraph (B), (C), or (D) of paragraph (2) may not be furnished to a later selection board unless—

(A) the information has been properly placed in the official military personnel file of the officer concerned; or

(B) the information is provided to the later selection board in accordance with paragraph (2).

(6)(A) Before information described in paragraph (2)(B) regarding an eligible officer is furnished to a selection board, the Secretary of the military department concerned shall ensure—

(i) that such information is made available to such officer; and

(ii) that the officer is afforded a reasonable opportunity to submit comments on that information to the selection board.

(B) If an officer cannot be given access to the information referred to in subparagraph (A) because of its classification status, the officer shall, to the maximum extent practicable, be furnished with an appropriate summary of the information.

(b) The Secretary of the military department concerned shall furnish each selection board convened under section 611(a) of this title with—

(1) the maximum number, as determined in accordance with section 622 of this title, of officers in each competitive category under consideration that the board may recommend for promotion to the next higher grade;

(2) the names of all officers in each competitive category to be considered by the board for promotion;

(3) the pertinent records (as determined by the Secretary) of each officer whose name is furnished to the board;

(4) information or guidelines relating to the needs of the armed force concerned for officers having particular skills, including guidelines or information relating to the need for either a minimum number or a maximum number of officers with particular skills within a competitive category;

(5) guidelines, based upon guidelines received by the Secretary from the Secretary of Defense under subsection (c), for the purpose of ensuring that the board gives appropriate consideration to the performance in joint duty assignments of officers who are serving, or have served, in such assignments; and

(6) such other information and guidelines as may be necessary to enable the board to properly perform its functions.

(c) The Secretary of Defense, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, shall furnish to the Secretaries of the military departments guidelines for the purpose of ensuring that each selection board convened under section 611(a) of this title gives appropriate consideration to the performance in joint duty assignments of officers who are serving, or have served, in such assignments.

(d) Information or guidelines furnished to a selection board under subsection (b) may not be modified, withdrawn, or supplemented after the board submits the report to the Secretary of the military department concerned pursuant to section 617(a) of this title, except that, in the case of a report returned to a board pursuant to section 618(a)(2) of this title for further proceedings because of a determination by the Secretary of the military department concerned that the board acted contrary to law, regulation, or guidelines, the Secretary may modify, withdraw, or supplement such information or guidelines as part of a written explanation to the board as provided in that section.

(e) The Secretary of each military department, under uniform regulations prescribed by the Secretary of Defense, shall include in guidelines furnished to a selection board convened under section 611(a) of this title that is considering officers in a health-professions competitive category for promotion to a grade below colonel or, in the case of the Navy, captain, a direction that the board give consideration to an officer's clinical proficiency and skill as a health professional to at least as great an extent as the board gives to the officer's administrative and management skills.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2852; amended P.L. 99–433, § 402(b), Oct. 1, 1986, 100 Stat. 1030; P.L. 100–456, § 501(a), Sept. 29, 1988, 102 Stat. 1965; P.L. 101–189, § 519, Nov. 29, 1989, 103 Stat. 1444; P.L. 102–190, § 504(a)(1), Dec. 5, 1991, 105 Stat. 1355; P.L. 102–484, § 1052(7), Oct. 23, 1992, 106 Stat. 2499.)

§ 616. Recommendations for promotion by selection boards

(a) A selection board convened under section 611(a) of this title shall recommend for promotion to the next higher grade those officers considered by the board whom the board, giving due consideration to the needs of the armed force concerned for officers with particular skills (as noted in the guidelines or information furnished the board under section 615(b) of this title), considers best qualified for promotion within each competitive category considered by the board.

(b) The Secretary of the military department concerned shall establish the number of officers such a selection board may recommend for promotion from among officers being considered from below the promotion zone in any competitive category. Such number may not exceed the number equal to 10 percent of the maximum number of officers that the board is authorized to recommend for promotion in such competitive category, except that

the Secretary of Defense may authorize a greater number, not to exceed 15 percent of the total number of officers that the board is authorized to recommend for promotion, if the Secretary of Defense determines that the needs of the service so require. If the number determined under this subsection is less than one, the board may recommend one such officer. The number of officers recommended for promotion from below the promotion zone does not increase the maximum number of officers which the board is authorized under section 615 of this title to recommend for promotion.

(c) A selection board convened under section 611(a) of this title may not recommend an officer for promotion unless—

(1) the officer receives the recommendation of a majority of the members of the board; and

(2) a majority of the members of the board finds that the officer is fully qualified for promotion.

(d) Except as otherwise provided by law, an officer on the active-duty list may not be promoted to a higher grade under this chapter unless he is considered and recommended for promotion to that grade by a selection board convened under this chapter.

(e) The recommendations of a selection board may be disclosed only in accordance with regulations prescribed by the Secretary of Defense. Those recommendations may not be disclosed to a person not a member of the board (or a member of the administrative staff designated by the Secretary concerned to assist the board) until the written report of the recommendations of the board, required by section 617 of this title, is signed by each member of the board.

(f) The Secretary convening a selection board under section 611(a) of this title, and an officer or other official exercising authority over any member of a selection board, may not—

(1) censure, reprimand, or admonish the selection board or any member of the board with respect to the recommendations of the board or the exercise of any lawful function within the authorized discretion of the board; or

(2) attempt to coerce or, by any unauthorized means, influence any action of a selection board or any member of a selection board in the formulation of the board's recommendations.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2852; and amended P.L. 100–456, § 501(b), Sept. 29, 1988, 102 Stat. 1966; P.L. 102–190, § 504(b), Dec. 5, 1991, 105 Stat. 1357; P.L. 102–484, § 1052(8), Oct. 23, 1992, 106 Stat. 2499.)

§ 617. Reports of selection boards

(a) Each selection board convened under section 611(a) of this title shall submit to the Secretary of the military department concerned a written report, signed by each member of the board, containing a list of the names of the officers it recommends for promotion and certifying (1) that the board has carefully considered the record of each officer whose name was furnished to it under section 615 of this title, and (2) that, in the opinion of a majority of the members of the board, the officers recommended for promotion by the board are best qualified for promotion to meet the needs of the armed force concerned (as noted in the guidelines or information furnished the board under section 615(b) of this title) among those officers whose names were furnished to the selection board.

(b) A selection board convened under section 611(a) of this title shall include in its report to the Secretary concerned the name of any regular or reserve officer before it for consideration for promotion whose record, in the opinion of a majority of the members of the board, indicates that the officer should be required under chapter 60 or 1411 of this title to show cause for his retention on active duty.

(c) A selection board convened under section 611(a) of this title shall include in its report to the Secretary concerned the name of any officer considered and not recommended for promotion by the board who submitted to the board a request not to be selected for promotion or who otherwise directly caused his nonselection through written communication to the Board under section 614(b) of this title.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2853; amended P.L. 100–456, § 501(c), Sept. 29, 1988, 102 Stat. 1966; P.L. 102–484, § 1052(8), Oct. 23, 1992, 106 Stat. 2499; P.L. 103–337, § § 1623, 1691(b)(1), Oct. 5, 1994, 108 Stat. 2961; P.L. 105–261, § 502(b), Oct. 17, 1998, 112 Stat. 2003; P.L. 106–65, § 503(a), Oct. 5, 1999, 113 Stat. 590.)

§ 618. Action on reports of selection boards

(a)(1) Upon receipt of the report of a selection board submitted to him under section 617(a) of this title, the Secretary of the military department concerned shall review the report to determine whether the board has acted contrary to law or regulation or to guidelines furnished the board under section 615(b) of this title. Following such review, unless the Secretary concerned makes a determination as described in paragraph (2), the Secretary shall submit the report as required by subsection (b) or (c), as appropriate.

(2) If, on the basis of a review of the report under paragraph (1), the Secretary of the military department concerned determines that the board acted contrary to law or regulation or to guidelines furnished the board under section 615(b) of this title, the Secretary shall return the report, together with a written explanation of the basis for such determination, to the board for further proceedings. Upon receipt of a report returned by the Secretary concerned under this paragraph, the selection board (or a subsequent selection board convened under section 611(a) of this title for the same grade and competitive category) shall conduct such proceedings as may be necessary in order to revise the report to be consistent with law, regulation, and such guidelines and shall resubmit the report, as revised, to the Secretary in accordance with section 617 of this title.

(b)(1) After completing the requirements of subsection (a), the Secretary concerned, in the case of the report of a selection board that considered officers who are serving, or have served, in joint duty assignments, shall submit the report to the Chairman of the Joint Chiefs of Staff.

(2) The Chairman, in accordance with guidelines furnished to the Chairman by the Secretary of Defense, shall review the report for the purpose of determining if—

(A) the selection board acted consistent with the guidelines of the Secretary of Defense under section 615(c) of this title to ensure that selection boards give appropriate consideration to

the performance in joint duty assignments of officers who are serving, or have served, in such assignments; and

(B) the selection board otherwise gave appropriate consideration to the performance in joint duty assignments of officers who are serving, or have served, in such assignments.

(3) After reviewing the report, the Chairman shall return the report, with his determinations and comments, to the Secretary concerned.

(4) If the Chairman determines that the board acted contrary to the guidelines of the Secretary of Defense under section 615(c) of this title or otherwise failed to give appropriate consideration to the performance of officers in joint duty assignments, the Secretary concerned may—

(A) return the report, together with the Chairman's determinations and comments, to the selection board (or a subsequent selection board convened under section 611(a) of this title for the same grade and competitive category) for further proceedings in accordance with subsection (a);

(B) convene a special selection board in the manner provided for under section 628 of this title; or

(C) take other appropriate action to satisfy the concerns of the Chairman.

(5) If, after completion of all actions taken under paragraph (4), the Secretary concerned and the Chairman remain in disagreement with respect to the report of a selection board, the Secretary concerned shall indicate such disagreement, and the reasons for such disagreement, as part of his transmittal of the report of the selection board to the Secretary of Defense under subsection (c). Such transmittal shall include any comments submitted by the Chairman.

(c)(1) After his final review of the report of a selection board, the Secretary concerned shall submit the report, with his recommendations thereon, to the Secretary of Defense for transmittal to the President for his approval or disapproval. The Secretary of Defense shall, before transmitting the report of a selection board to the President, take appropriate action to resolve any disagreement between the Secretary concerned and the Chairman transmitted to him under section (b)(5). If the authority of the President under this paragraph to approve or disapprove the report of a selection board is delegated to the Secretary of Defense, it may not be redelegated except to an official in the Office of the Secretary of Defense.

(2) If the report of a selection board names an officer as having a record which indicates that the officer should be required to show cause for his retention on active duty, the Secretary concerned may provide for the review of the record of that officer as provided for under regulations prescribed under section 1181 of this title.

(d) The name of an officer recommended for promotion by a selection board may be removed from the report of the selection board only by the President.

(e)(1) The names of the officers recommended for promotion in the report of a selection board shall be disseminated to the armed force concerned as follows:

(A) In the case of officers recommended for promotion to a grade below brigadier general or rear admiral (lower half), such names may be disseminated upon, or at any time after, the transmittal of the report to the President.

(B) In the case of officers recommended for promotion to a grade above colonel or, in the case of the Navy, captain, such names may be disseminated upon, or at any time after, the approval of the report by the President.

(C) In the case of officers whose names have not been sooner disseminated, such names shall be promptly disseminated upon confirmation by the Senate.

(2) A list of names of officers disseminated under paragraph (1) may not include—

(A) any name removed by the President from the report of the selection board containing that name, if dissemination is under the authority of subparagraph (B) of such paragraph; or

(B) the name of any officer whose promotion the Senate failed to confirm, if dissemination is under the authority of subparagraph (C) of such paragraph.

(f) Except as authorized or required by this section, proceedings of a selection board convened under section 611(a) of this title may not be disclosed to any person not a member of the board.

(g) If the Secretary of a military department or the Secretary of Defense makes a recommendation under this section that the name of an officer be removed from a report of a selection board and the recommendation is accompanied by information that was not presented to that selection board, that information shall be made available to that officer. The officer shall then be afforded a reasonable opportunity to submit comments on that information to the officials making the recommendation and the officials reviewing the recommendation. If an eligible officer cannot be given access to such information because of its classification status, the officer shall, to the maximum extent practicable, be provided with an appropriate summary of the information.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2853; amended P.L. 98–525, § 524(a), Oct. 19, 1984, 98 Stat. 2524; P.L. 99–433, § 402(c), Oct. 1, 1986, 100 Stat. 1030; P.L. 100–456, § 501(d), Sept. 29, 1988, 102 Stat. 1966; P.L. 102–190, § 504(c), Dec. 5, 1991, 105 Stat. 1357; P.L. 102–484, § 1052(8), (9), Oct. 23, 1992, 106 Stat. 2499; P.L. 106–398, § 1[503(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–100.)

SUBCHAPTER II—PROMOTIONS

Sec.

619. Eligibility for consideration for promotion: time-in-grade and other requirements.
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§ 619. Eligibility for consideration for promotion: time-in-grade and other requirements

(a)(1) An officer who is on the active-duty list of the Army, Air Force, or Marine Corps and holds a permanent appointment in the grade of second lieutenant or first lieutenant or is on the active-duty list of the Navy and holds a permanent appointment in the grade of ensign or lieutenant (junior grade) may not be promoted to the next higher permanent grade until he has completed the following period of service in the grade in which he holds a permanent appointment:

(A) Eighteen months, in the case of an officer holding a permanent appointment in the grade of second lieutenant or ensign.

(B) Two years, in the case of an officer holding a permanent appointment in the grade of first lieutenant or lieutenant (junior grade).

(2) Subject to paragraph (4), an officer who is on the active-duty list of the Army, Air Force, or Marine Corps and holds a permanent appointment in a grade above first lieutenant or is on the active-duty list of the Navy and holds a permanent appointment in a grade above lieutenant (junior grade) may not be considered for selection for promotion to the next higher permanent grade until he has completed the following period of service in the grade in which he holds a permanent appointment:

(A) Three years, in the case of an officer of the Army, Air Force, or Marine Corps holding a permanent appointment in the grade of captain, major, or lieutenant colonel or of an officer of the Navy holding a permanent appointment in the grade of lieutenant, lieutenant commander, or commander.

(B) One year, in the case of an officer of the Army, Air Force, or Marine Corps holding a permanent appointment in the grade of colonel or brigadier general or of an officer of the Navy holding a permanent appointment in the grade of captain or rear admiral (lower half).

(3) When the needs of the service require, the Secretary of the military department concerned may prescribe a longer period of service in grade for eligibility for promotion, in the case of officers to whom paragraph (1) applies, or for eligibility for consideration for promotion, in the case of officers to whom paragraph (2) applies.

(4) The Secretary of the military department concerned may waive paragraph (2) to the extent necessary to assure that officers described in clause (A) of such paragraph have at least two opportunities for consideration for promotion to the next higher grade as officers below the promotion zone.

(5) In computing service in grade for purposes of this section, service in a grade held as a result of assignment to a position is counted as service in the grade in which the officer would have served except for such assignment or appointment.

(b)(1) Except as provided in paragraph (2), an officer who has failed of selection for promotion to the next higher grade remains eligible for consideration for promotion to that grade as long as he continues on active duty in other than a retired status and is not promoted.

(2) Paragraph (1) does not apply to a regular officer who is ineligible for consideration for promotion under section 631(c) of this title or to a reserve officer who has failed of selection for promotion to the grade of captain or, in the case of an officer of the Navy, lieutenant for the second time.

(c)(1) Each time a selection board is convened under section 611(a) of this title for consideration of officers in a competitive category for promotion to the next higher grade, each officer in the promotion zone (except as provided under paragraph (2)), and each officer above the promotion zone, for the grade and competitive category under consideration shall be considered for promotion.

(2) The Secretary of the military department concerned—

(A) may, in accordance with standards and procedures prescribed by the Secretary of Defense in regulations which shall apply uniformly among the military departments, limit the officers to be considered by a selection board from below the promotion zone to those officers who are determined to be exceptionally well qualified for promotion;

(B) may, by regulation, prescribe a period of time, not to exceed one year, from the time an officer is placed on the active-duty list during which the officer shall be ineligible for consideration for promotion; and

(C) may, by regulation, preclude from consideration by a selection board by which he would otherwise be eligible to be considered, an officer who has an established separation date that is within 90 days after the date the board is convened.

(3)(A) The Secretary of Defense may authorize the Secretaries of the military departments to preclude from consideration by selection boards for promotion to the grade of brigadier general or rear admiral (lower half) officers in the grade of colonel or, in the case of the Navy, captain who—

(i) have been considered and not selected for promotion to the grade of brigadier general or rear admiral (lower half) by at least two selection boards; and

(ii) are determined, in accordance with standards and procedures prescribed pursuant to subparagraph (B), as not being exceptionally well qualified for promotion.

(B) If the Secretary of Defense authorizes the Secretaries of the military departments to have the authority described in subparagraph (A), the Secretary shall prescribe by regulation the standards and procedures for the exercise of such authority. Those regulations shall apply uniformly among the military departments and shall include the following provisions:

(i) A requirement that the Secretary of a military department may exercise such authority in the case of a particular selection board only if the Secretary of Defense approves the exercise of that authority for that board.

(ii) A requirement that an officer may be precluded from consideration by a selection board under this paragraph only upon the recommendation of a preselection board of officers convened by the Secretary of the military department concerned and composed of at least three officers all of whom are serving in a grade higher than the grade of such officer.

(iii) A requirement that such a preselection board may not recommend that an officer be precluded from such consideration unless the Secretary concerned has given the officer advance written notice of the convening of such board and of the military records that will be considered by the board and has given the officer a reasonable period before the convening of the board in which to submit comments to the board.

(iv) A requirement that the Secretary convening such a preselection board shall provide general guidance to the board in accordance with standards and procedures prescribed by the Secretary of Defense in those regulations.

(v) A requirement that the preselection board may recommend that an officer be precluded from consideration by a selection board only on the basis of the general guidance provided by the Secretary of the military department concerned, information in the officer's official military personnel records that has been described in the notice provided the officer as required pursuant to clause (iii), and any communication to the board received from that officer before the board convenes.

(d) A selection board convened under section 611(a) of this title may not consider for promotion to the next higher grade any of the following officers:

(1) An officer whose name is on a promotion list for that grade as a result of his selection for promotion to that grade by an earlier selection board convened under that section.

(2) An officer who is recommended for promotion to that grade in the report of an earlier selection board convened under that section, in the case of such a report that has not yet been approved by the President.

(3) An officer of the Marine Corps who is an officer designated for limited duty and who holds a grade above major.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2854; amended P.L. 97–22, § 4(c), July 10, 1981, 95 Stat. 126; P.L. 97–86, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; P.L. 98–525, §§ 525(a), (b), 529(a), Oct. 19, 1984, 98 Stat. 2524, 2526; P.L. 99–145, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628; P.L. 99–433, § 404, Oct. 1, 1986, 100 Stat. 1032; P.L. 100–180, §§ 1305(a), 1314(b)(4), Dec. 4, 1987, 101 Stat. 1173, 1175; P.L. 100–456, § 515, Sept. 29, 1988, 102 Stat. 1970; P.L. 102–190, § 504(d), Dec. 5, 1991, 105 Stat. 1357; P.L. 103–160, § 931(b), (c)(1), Nov. 30, 1993, 107 Stat. 1734; P.L. 105–85, § 503(a), Nov. 18, 1997, 111 Stat. 1724.)

§ 619a. Eligibility for consideration for promotion: joint duty assignment required before promotion to general or flag grade; exceptions

(a) GENERAL RULE.—An officer on the active-duty list of the Army, Navy, Air Force, or Marine Corps may not be appointed to the grade of brigadier general or rear admiral (lower half) unless the officer has completed a full tour of duty in a joint duty assignment (as described in section 664(f) of this title).

(b) EXCEPTIONS.—Subject to subsection (c), the Secretary of Defense may waive subsection (a) in the following circumstances:

(1) When necessary for the good of the service.

(2) In the case of an officer whose proposed selection for promotion is based primarily upon scientific and technical qualifications for which joint requirements do not exist.

(3) In the case of—

(A) a medical officer, dental officer, veterinary officer, medical service officer, nurse, or biomedical science officer;

(B) a chaplain; or

(C) a judge advocate.

(4) In the case of an officer selected by a promotion board for appointment to the grade of brigadier general or rear admiral (lower half) while serving in a joint duty assignment if—

(A) at least 180 days of that joint duty assignment have been completed on the date of the convening of that selection board; and

(B) the officer's total consecutive service in joint duty assignments within that immediate organization is not less than two years.

(5) In the case of an officer who served in a joint duty assignment that began before January 1, 1987, if the officer served in that assignment for a period of sufficient duration (which may not be less than 12 months) for the officer's service to have been considered a full tour of duty under the policies and regulations in effect on September 30, 1986.

(c) WAIVER TO BE INDIVIDUAL.—A waiver may be granted under subsection (b) only on a case-by-case basis in the case of an individual officer.

(d) SPECIAL RULE FOR GOOD-OF-THE-SERVICE WAIVER.—In the case of a waiver under subsection (b)(1), the Secretary shall provide that the first duty assignment as a general or flag officer of the officer for whom the waiver is granted shall be in a joint duty assignment.

(e) LIMITATION ON DELEGATION OF WAIVER AUTHORITY.—The authority of the Secretary of Defense to grant a waiver under subsection (b) (other than under paragraph (1) of that subsection) may be delegated only to the Deputy Secretary of Defense, an Under Secretary of Defense, or an Assistant Secretary of Defense.

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section. The regulations shall specifically identify for purposes of subsection (b)(2) those categories of officers for which selection for promotion to brigadier general or, in the case of the Navy, rear admiral (lower half) is based primarily upon scientific and technical qualifications for which joint requirements do not exist.

(g) LIMITATION FOR GENERAL AND FLAG OFFICERS PREVIOUSLY RECEIVING JOINT DUTY ASSIGNMENT WAIVER.—A general officer or flag officer who before January 1, 1999, received a waiver of subsection (a) under the authority of this subsection (as in effect before that date) may not be appointed to the grade of lieutenant general or vice admiral until the officer completes a full tour of duty in a joint duty assignment.

(h) SPECIAL TRANSITION RULES FOR NUCLEAR PROPULSION OFFICERS.—An officer of the Navy designated as a qualified nuclear propulsion officer who before January 1, 1997, is appointed to the grade of rear admiral (lower half) without regard to subsection (a) may not be appointed to the grade of rear admiral until the officer completes a full tour of duty in a joint duty assignment.

(Added P.L. 103–160, § 931(a), Nov. 30, 1993, 107 Stat. 1732; amended P.L. 104–106, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; P.L. 105–85, § 503(a), Nov. 18, 1997, 111 Stat. 1724; P.L. 106–65, §§ 508, 1067(1), Oct. 5, 1999, 113 Stat. 591, 774.)

§ 620. Active-duty lists

(a) The Secretary of the military department concerned shall maintain a single list of all officers (other than officers described in section 641 of this title) who are on active duty for each armed force under his jurisdiction (other than the Coast Guard when it is operating as a service in the Navy).

(b) Officers shall be carried on the active-duty list of the armed force of which they are members in the order of seniority of the grade in which they are serving on active duty. Officers serving in the same grade shall be carried in the order of their rank in that grade.

(c) An officer whose position on the active-duty list results from service under a temporary appointment or in a grade held by reason of assignment to a position has, when that appointment or assignment ends, the grade and position on the active-duty list that he would have held if he had not received that appointment or assignment.

(d) Under regulations prescribed by the Secretary of the military department concerned, a reserve officer who is ordered to active duty (whether voluntarily or involuntarily) during a war or national emergency and who would otherwise be placed on the active-duty list may be excluded from that list as determined by the Secretary concerned. Exclusion of an officer from the active-duty list as the result of action by the Secretary concerned under the preceding sentence shall expire not later than 24 months after the date on which the officer enters active duty under an order to active duty covered by that sentence.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2855; amended P.L. 103–337, § 1624, Oct. 5, 1994, 108 Stat. 2961; P.L. 104–106, § 1501(a)(1), Feb. 10, 1996, 110 Stat. 495.)

§ 621. Competitive categories for promotion

Under regulations prescribed by the Secretary of Defense, the Secretary of each military department shall establish competitive categories for promotion. Each officer whose name appears on an active-duty list shall be carried in a competitive category of officers. Officers in the same competitive category shall compete among themselves for promotion.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2856.)

§ 622. Numbers to be recommended for promotion

Before convening a selection board under section 611(a) of this title for any grade and competitive category, the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense, shall determine (1) the number of positions needed to accomplish mission objectives which require officers of such competitive category in the grade to which the board will recommend officers for promotion, (2) the estimated number of officers needed to fill vacancies in such positions during the period in which it is anticipated that officers selected for promotion will be promoted, and (3) the number of officers authorized by the Secretary of the military department concerned to serve on active duty in the grade and competitive category under consideration. Based on such determinations, the Secretary of the military department concerned shall determine the maximum number of officers in such

competitive category which the selection board may recommend for promotion.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2856.)

§ 623. Establishment of promotion zones

(a) Before convening a selection board under section 611(a) of this title to consider officers for promotion to any grade above first lieutenant or lieutenant (junior grade), the Secretary of the military department concerned shall establish a promotion zone for officers serving in each grade and competitive category to be considered by the board.

(b) The Secretary concerned shall determine the number of officers in the promotion zone for officers serving in any grade and competitive category from among officers who are eligible for promotion in that grade and competitive category. Such determination shall be made on the basis of an estimate of—

(1) the number of officers needed in that competitive category in the next higher grade in each of the next five years;

(2) the number of officers to be serving in that competitive category in the next higher grade in each of the next five years;

(3) in the case of a promotion zone for officers to be promoted to a grade to which section 523 of this title is applicable, the number of officers authorized for such grade under such section to be on active duty on the last day of each of the next five fiscal years; and

(4) the number of officers that should be placed in that promotion zone in each of the next five years to provide to officers in those years relatively similar opportunity for promotion.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2956.)

§ 624. Promotions: how made

(a)(1) When the report of a selection board convened under section 611(a) of this title is approved by the President, the Secretary of the military department concerned shall place the names of all officers approved for promotion within a competitive category on a single list for that competitive category, to be known as a promotion list, in the order of the seniority of such officers on the active-duty list.

(2) Except as provided in subsection (d), officers on a promotion list for a competitive category shall be promoted to the next higher grade when additional officers in that grade and competitive category are needed. Promotions shall be made in the order in which the names of officers appear on the promotion list and after officers previously selected for promotion in that competitive category have been promoted. Officers to be promoted to the grade of first lieutenant or lieutenant (junior grade) shall be promoted in accordance with regulations prescribed by the Secretary concerned.

(b)(1) A regular officer who is promoted under this section is appointed in the regular grade to which promoted and a reserve officer who is promoted under this section is appointed in the reserve grade to which promoted.

(2) The date of rank of an officer appointed to a higher grade under this section is determined under section 741(d) of this title.

(c) Appointments under this section shall be made by the President, by and with the advice and consent of the Senate, except that appointments under this section in the grade of first lieutenant or captain or lieutenant (junior grade) or lieutenant shall be made by the President alone.

(d)(1) Under regulations prescribed by the Secretary concerned, the appointment of an officer under this section may be delayed if—

(A) sworn charges against the officer have been received by an officer exercising general court-martial jurisdiction over the officer and such charges have not been disposed of;

(B) an investigation is being conducted to determine whether disciplinary action of any kind should be brought against the officer;

(C) a board of officers has been convened under chapter 60 of this title to review the record of the officer; or

(D) a criminal proceeding in a Federal or State court is pending against the officer.

If no disciplinary action is taken against the officer, if the charges against the officer are withdrawn or dismissed, if the officer is not ordered removed from active duty by the Secretary concerned under chapter 60 of this title, or if the officer is acquitted of the charges brought against him, as the case may be, then unless action to delay an appointment has also been taken under subsection (d)(2) the officer shall be retained on the promotion list and shall, upon promotion to the next higher grade, have the same date of rank, the same effective date for the pay and allowances of the grade to which promoted, and the same position on the active-duty list as he would have had if no delay had intervened, unless the Secretary concerned determines that the officer was unqualified for promotion for any part of the delay. If the Secretary makes such a determination, the Secretary may adjust such date of rank, effective date of pay and allowances, and position on the active-duty list as the Secretary considers appropriate under the circumstances.

(2) Under regulations prescribed by the Secretary concerned, the appointment of an officer under this section may also be delayed in any case in which there is cause to believe that the officer is mentally, physically, morally, or professionally unqualified to perform the duties of the grade for which he was selected for promotion. If the Secretary concerned later determines that the officer is qualified for promotion to such grade, the officer shall, upon such promotion, have the same date of rank, the same effective date for pay and allowances in the higher grade to which appointed, and the same position on the active-duty list as he would have had if no delay had intervened, unless the Secretary concerned determines that the officer was unqualified for promotion for any part of the delay. If the Secretary makes such a determination, the Secretary may adjust such date of rank, effective date of pay and allowances, and position on the active-duty list as the Secretary considers appropriate under the circumstances.

(3) The appointment of an officer may not be delayed under this subsection unless the officer has been given written notice of

the grounds for the delay, unless it is impracticable to give such written notice before the effective date of the appointment, in which case such written notice shall be given as soon as practicable. An officer whose promotion has been delayed under this subsection shall be afforded an opportunity to make a written statement to the Secretary concerned in response to the action taken. Any such statement shall be given careful consideration by the Secretary.

(4) An appointment of an officer may not be delayed under this subsection for more than six months after the date on which the officer would otherwise have been appointed unless the Secretary concerned specifies a further period of delay. An officer's appointment may not be delayed more than 90 days after final action has been taken in any criminal case against such officer in a Federal or State court, more than 90 days after final action has been taken in any court-martial case against such officer, or more than 18 months after the date on which such officer would otherwise have been appointed, whichever is later.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2857; amended P.L. 97–22, § 4(d), July 10, 1981, 95 Stat. 126; P.L. 97–295, § 1(8), Oct. 12, 1982, 96 Stat. 1289; P.L. 98–525, § 526, Oct. 19, 1984, 98 Stat. 2525.)

§ 625. Authority to vacate promotions to grades of brigadier general and rear admiral (lower half)

(a) The President may vacate the promotion to the grade of brigadier general or rear admiral (lower half) of an officer who has served less than 18 months in that grade after promotion to that grade under this chapter.

(b) An officer of the Army, Air Force, or Marine Corps whose promotion is vacated under this section holds the regular grade of colonel, if he is a regular officer, or the reserve grade of colonel, if he is a reserve officer. An officer of the Navy whose promotion is vacated under this section holds the regular grade of captain, if he is a regular officer, or the reserve grade of captain, if he is a reserve officer.

(c) The position on the active-duty list of an officer whose promotion is vacated under this section is the position he would have held had he not been promoted to the grade of brigadier general or rear admiral (lower half).

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2858; amended P.L. 97–86, § 405(b)(1), (4)(A), Dec. 1, 1981, 95 Stat. 1105; P.L. 99–145, § 514(b)(1), (4)(A), Nov. 8, 1985, 99 Stat. 628.)

§ 626. Acceptance of promotions; oath of office

(a) An officer who is appointed to a higher grade under section 624 of this title is considered to have accepted such appointment on the date on which the appointment is made unless he expressly declines the appointment.

(b) An officer who has served continuously since he subscribed to the oath of office prescribed in section 3331 of title 5 is not required to take a new oath upon appointment to a higher grade under section 624 of this title.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2858.)

SUBCHAPTER III—FAILURE OF SELECTION FOR PROMOTION AND RETIREMENT FOR YEARS OF SERVICE

Sec.
627. Failure of selection for promotion.
628. Special selection boards.
629. Removal from a list of officers recommended for promotion.
630. Discharge of regular commissioned officers with less than five years of active commissioned service or found not qualified for promotion for first lieutenant or lieutenant (junior grade).
631. Effect of failure of selection for promotion: regular first lieutenants and lieutenants (junior grade).
632. Effect of failure of selection for promotion: regular captains and majors of the Army, Air Force, and Marine Corps and regular lieutenants and lieutenant commanders of the Navy.
633. Retirement for years of service: regular lieutenant colonels and commanders.
634. Retirement for years of service: regular colonels and Navy captains.
635. Retirement for years of service: regular brigadier generals and rear admirals (lower half).
636. Retirement for years of service: regular officers in grades above brigadier general and rear admiral (lower half).

§ 627. Failure of selection for promotion

An officer in a grade below the grade of colonel or, in the case of an officer of the Navy, captain who is in or above the promotion zone established for his grade and competitive category under section 623 of this title and is considered but not selected for promotion by a selection board convened under section 611(a) of this title shall be considered to have failed of selection for promotion.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2859.)

§ 628. Special selection boards

(a) PERSONS NOT CONSIDERED BY PROMOTION BOARDS DUE TO ADMINISTRATIVE ERROR.—(1) If the Secretary of the military department concerned determines that because of administrative error a person who should have been considered for selection for promotion by a promotion board was not so considered, the Secretary shall convene a special selection board under this subsection to determine whether that person (whether or not then on active duty) should be recommended for promotion.

(2) A special selection board convened under paragraph (1) shall consider the record of the person whose name was referred to it for consideration as that record would have appeared to the board that should have considered him. That record shall be compared with a sampling of the records of those officers of the same competitive category who were recommended for promotion, and those officers who were not recommended for promotion, by the board that should have considered him.

(3) If a special selection board convened under paragraph (1) does not recommend for promotion a person whose name was referred to it for consideration for selection for appointment to a grade other than a general officer or flag officer grade, the person shall be considered to have failed of selection for promotion.

(b) PERSONS CONSIDERED BY PROMOTION BOARDS IN UNFAIR MANNER.—(1) If the Secretary of the military department concerned determines, in the case of a person who was considered for selection for promotion by a promotion board but was not selected,

that there was material unfairness with respect to that person, the Secretary may convene a special selection board under this subsection to determine whether that person (whether or not then on active duty) should be recommended for promotion. In order to determine that there was material unfairness, the Secretary must determine that—

(A) the action of the promotion board that considered the person was contrary to law or involved material error of fact or material administrative error; or

(B) the board did not have before it for its consideration material information.

(2) A special selection board convened under paragraph (1) shall consider the record of the person whose name was referred to it for consideration as that record, if corrected, would have appeared to the board that considered him. That record shall be compared with the records of a sampling of those officers of the same competitive category who were recommended for promotion, and those officers who were not recommended for promotion, by the board that considered him.

(3) If a special selection board convened under paragraph (1) does not recommend for promotion a person whose name was referred to it for consideration, the person incurs no additional failure of selection for promotion.

(c) REPORTS OF BOARDS.—(1) Each special selection board convened under this section shall submit to the Secretary of the military department concerned a written report, signed by each member of the board, containing the name of each person it recommends for promotion and certifying that the board has carefully considered the record of each person whose name was referred to it.

(2) The provisions of sections 617(b) and 618 of this title apply to the report and proceedings of a special selection board convened under this section in the same manner as they apply to the report and proceedings of a selection board convened under section 611(a) of this title. However, in the case of a board convened under this section to consider a warrant officer or former warrant officer, the provisions of sections 576(d) and 576(f) of this title (rather than the provisions of sections 617(b) and 618 of this title) apply to the report and proceedings of the board in the same manner as they apply to the report and proceedings of a selection board convened under section 573 of this title.

(d) APPOINTMENT OF PERSONS SELECTED BY BOARDS.—(1) If the report of a special selection board convened under this section, as approved by the President, recommends for promotion to the next higher grade a person whose name was referred to it for consideration, that person shall, as soon as practicable, be appointed to that grade in accordance with subsections (b), (c), and (d) of section 624 of this title. However, in the case of a board convened under this section to consider a warrant officer or former warrant officer, if the report of that board, as approved by the Secretary concerned, recommends that warrant officer or former warrant officer for promotion to the next higher grade, that person shall, as soon as practicable, be appointed to the next higher grade in accordance with

provisions of section 578(c) of this title (rather than subsections (b), (c), and (d) of section 624 of this title).

(2) An person who is appointed to the next higher grade as the result of the recommendation of a special selection board convened under this section shall, upon that appointment, have the same date of rank, the same effective date for the pay and allowances of that grade, and the same position on the active-duty list as he would have had if he had been recommended for promotion to that grade by the board which should have considered, or which did consider, him. In the case of a person who is not on the active-duty list when appointed to the next higher grade, placement of that person on the active-duty list pursuant to the preceding sentence shall be only for purposes of determination of eligibility of that person for consideration for promotion by any subsequent special selection board under this section.

(e) DECEASED PERSONS.—If a person whose name is being considered for referral to a special selection board under this section dies before the completion of proceedings under this section with respect to that person, this section shall be applied to that person posthumously.

(f) CONVENING OF BOARDS.—A board convened under this section—

(1) shall be convened under regulations prescribed by the Secretary of Defense;

(2) shall be composed in accordance with section 612 of this title or, in the case of board to consider a warrant officer or former warrant officer, in accordance with section 573 of this title and regulations prescribed by the Secretary of the military department concerned; and

(3) shall be subject to the provisions of section 613 of this title.

(g) PROMOTION BOARD DEFINED.—In this section, the term "promotion board" means a selection board convened by the Secretary of a military department under section 573(a) or 611(a) of this title.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2859; amended P.L. 98–525, § 527(a), Oct. 19, 1984, 98 Stat. 2525; P.L. 102–190, § 1131(4), Dec. 5, 1991, 105 Stat. 1506; P.L. 102–484, § 1052(10), Oct. 23, 1992, 106 Stat. 2499; P.L. 105–261, § 501(a)–(e), Oct. 17, 1998, 112 Stat. 2000; P.L. 106–398, § 1[1087(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290.)

§ 629. Removal from a list of officers recommended for promotion

(a) The President may remove the name of any officer from a list of officers recommended for promotion by a selection board convened under this chapter.

(b) If, after consideration of a list of officers approved for promotion by the President, the Senate does not give its advice and consent to the appointment of an officer whose name is on the list, that officer's name shall be removed from the list.

(c)(1) An officer whose name is removed from a list under subsection (a) or (b) continues to be eligible for consideration for promotion. If he is recommended for promotion by the next selection board convened for his grade and competitive category and he is promoted, the Secretary of the military department concerned may, upon such promotion, grant him the same date of rank, the same

effective date for the pay and allowances of the grade to which promoted, and the same position on the active-duty list as he would have had if his name had not been so removed.

(2) If such an officer who is in a grade below the grade of colonel or, in the case of the Navy, captain is not recommended for promotion by the next selection board convened for his grade and competitive category, or if his name is again removed from the list of officers recommended for promotion, of if the Senate again does not give its advice and consent to his promotion, he shall be considered for all purposes to have twice failed of selection for promotion.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2860.)

§ 630. Discharge of regular commissioned officers with less than five years of active commissioned service or found not qualified for promotion for first lieutenant or lieutenant (junior grade)

The Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense—

(1) may discharge any regular officer on the active-duty list who—

(A) has less than five years of active commissioned service; or

(B) is serving in the grade of second lieutenant or ensign and has been found not qualified for promotion to the regular grade of first lieutenant or lieutenant (junior grade); and

(2) shall, unless the officer has been promoted, discharge any officer described in clause (1)(B) at the end of the 18-month period beginning on the date on which the officer is first found not qualified for promotion.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2861; amended P.L. 98–525, § 1405(11), Oct. 19, 1984, 98 Stat. 2622.)

§ 631. Effect of failure of selection for promotion: regular first lieutenants and lieutenants (junior grade)

(a) Except an officer of the Navy and Marine Corps who is an officer designated for limited duty (to whom section 5596(e) or 6383 of this title applies), each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of first lieutenant and has failed of selection for promotion to the regular grade of captain for the second time, and each officer of the Regular Navy who holds the regular grade of lieutenant (junior grade) and has failed of selection for promotion to the regular grade of lieutenant for the second time, whose name is not on a list of officers recommended for promotion to the next higher regular grade shall—

(1) be discharged on the date requested by him and approved by the Secretary of the military department concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board which considered him for the second time;

(2) if he is eligible for retirement under any provision of law, be retired under that law on the date requested by him

and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board which considered him for the second time; or

(3) if on the date on which he is to be discharged under clause (1) he is within two years of qualifying for retirement under section 3911, 6323, or 8911 of this title, be retained on active duty until he is qualified for retirement and then be retired under that section, unless he is sooner retired or discharged under another provision of law.

(b) The retirement or discharge of an officer pursuant to this section shall be considered to be an involuntary retirement or discharge for purposes of any other provision of law.

(c) An officer who is subject to discharge under subsection (a)(1) is not eligible for further consideration for promotion.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2861; amended P.L. 98–525, § 525(c), Oct. 19, 1984, 98 Stat. 2525.)

§ 632. Effect of failure of selection for promotion: regular captains and majors of the Army, Air Force, and Marine Corps and regular lieutenants and lieutenant commanders of the Navy

(a) Except an officer of the Navy and Marine Corps who is an officer designated for limited duty (to whom section 5596(e) or 6383 of this title applies) and except as provided under section 637(a) of this title, each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of captain or major, and each officer of the Regular Navy who holds the regular grade of lieutenant or lieutenant commander, who has failed of selection for promotion to the next higher regular grade for the second time and whose name is not on a list of officers recommended for promotion to the next higher regular grade shall—

(1) be discharged on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board which considered him for the second time;

(2) if he is eligible for retirement under any provision of law, be retired under that law on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board which considered him for the second time; or

(3) if on the date on which he is to be discharged under clause (1) he is within two years of qualifying for retirement under section 3911, 6323, or 8911 of this title, be retained on active duty until he is qualified for retirement and then retired under that section, unless he is sooner retired or discharged under another provision of law.

(b) The retirement or discharge of an officer pursuant to this section shall be considered to be an involuntary retirement or discharge for purposes of any other provision of law.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2862.)

§ 633. Retirement for years of service: regular lieutenant colonels and commanders

Except an officer of the Navy or Marine Corps who is an officer designated for limited duty to whom section 5596(e) or 6383 of this title applies and an officer of the Marine Corps designated for limited duty to whom section 5596(e) or section 6383 of this title applies and except as provided under section 637(b) of this title, each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of lieutenant colonel, and each officer of the Regular Navy who holds the regular grade of commander, who is not on a list of officers recommended for promotion to the regular grade of colonel or captain, respectively, shall, if not earlier retired, be retired on the first day of the month after the month in which he completes 28 years of active commissioned service.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2862; amended P.L. 98–525, § 529(b), § 1405(12), Oct. 19, 1984, 98 Stat. 2526, 2622; P.L. 102–484, § 504(a), Oct. 23, 1992, 106 Stat. 2403; P.L. 103–160, § 561(e), Nov. 30, 1993, 107 Stat. 1667; P.L. 105–261, § 504(a), Oct. 17, 1998, 112 Stat. 2004.)

§ 634. Retirement for years of service: regular colonels and Navy captains

Except an officer of the Navy who is designated for limited duty to whom section 6383(a)(4) of this title applies and except as provided under section 637(b) of this title, each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of colonel, and each officer of the Regular Navy who holds the regular grade of captain, who is not on a list of officers recommended for promotion to the regular grade of brigadier general or rear admiral (lower half), respectively, shall, if not earlier retired, be retired on the first day of the month after the month in which he completes 30 years of active commissioned service.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2862; amended P.L. 97–86, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; P.L. 98–525, § 1405(13), Oct. 19, 1984, 98 Stat. 2622; P.L. 99–145, § 514(b)(1), Nov. 8, 1985, 99 Stat. 629; P.L. 102–484, § 504(b), Oct. 23, 1992, 106 Stat. 2403; P.L. 103–160, § 561(e), Nov. 30, 1993, 107 Stat. 1667; P.L. 105–261, § 504(b), Oct. 17, 1998, 112 Stat. 2004.)

§ 635. Retirement for years of service: regular brigadier generals and rear admirals (lower half)

Except as provided under section 637(b) of this title, each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of brigadier general, and each officer of the Regular Navy who holds the regular grade of rear admiral (lower half), who is not on a list of officers recommended for promotion to the regular grade of major general or rear admiral, respectively, shall, if not earlier retired, be retired on the first day of the first month beginning after the date of the fifth anniversary of his appointment to that grade or on the first day of the month

after the month in which he completes 30 years of active commissioned service, whichever is later.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2863; amended P.L. 97–86, § 405(b)(1), (5)(A), Dec. 1, 1981, 95 Stat. 1105, 1106; P.L. 98–525, § 1405(13), Oct. 19, 1984, 98 Stat. 2622; P.L. 99–145, § 514(b)(1), (5)(A), Nov. 8, 1985, 99 Stat. 628.)

§ 636. Retirement for years of service: regular officers in grades above brigadier general and rear admiral (lower half)

(a) MAJOR GENERALS AND REAR ADMIRALS SERVING IN GRADE.—Except as provided in subsection (b) or (c) and under section 637(b) of this title, each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of major general, and each officer of the Regular Navy who holds the regular grade of rear admiral, shall, if not earlier retired, be retired on the first day of the first month beginning after the date of the fifth anniversary of his appointment to that grade or on the first day of the month after the month in which he completes 35 years of active commissioned service, whichever is later.

(b) LIEUTENANT GENERALS AND VICE ADMIRALS.—In the administration of subsection (a) in the case of an officer who is serving in the grade of lieutenant general or vice admiral, the number of years of active commissioned service applicable to the officer is 38 years.

(c) GENERALS AND ADMIRALS.—In the administration of subsection (a) in the case of an officer who is serving in the grade of general or admiral, the number of years of active commissioned service applicable to the officer is 40 years.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2863; amended P.L. 98–525, § 1405(14), Oct. 19, 1984, 98 Stat. 2622; P.L. 105–85, § 506(a), (b), Nov. 18, 1997, 111 Stat. 1726.)

SUBCHAPTER IV—CONTINUATION ON ACTIVE DUTY AND SELECTIVE EARLY RETIREMENT

Sec.
637. Selection of regular officers for continuation on active duty.
638. Selective early retirement.
638a. Modification to rules for continuation on active duty; enhanced authority for selective early retirement and early discharges.
639. Continuation on active duty to complete disciplinary action.
640. Deferment of retirement or separation for medical reasons.

§ 637. Selection of regular officers for continuation on active duty

(a)(1) An officer subject to discharge or retirement in accordance with section 632 of this title may, subject to the needs of the service, be continued on active duty if he is selected for continuation on active duty by a selection board convened under section 611(b) of this title.

(2) An officer who holds the regular grade of captain in the Army, Air Force, or Marine Corps, or the regular grade of lieutenant in the Navy, and who is subject to discharge or retirement in accordance with section 632 of this title may not be continued on active duty under this subsection for a period which extends beyond the last day of the month in which he completes 20 years of

active commissioned service unless he is promoted to the regular grade of major or lieutenant commander, respectively.

(3) An officer who holds the regular grade of major or lieutenant commander who is subject to discharge or retirement in accordance with section 632 of this title may not be continued on active duty under this subsection for a period which extends beyond the last day of the month in which he completes 24 years of active commissioned service unless he is promoted to the regular grade of lieutenant colonel or commander, respectively.

(4) An officer who is selected for continuation on active duty under this subsection but declines to continue on active duty shall be discharged, retired, or retained on active duty, as appropriate, in accordance with section 632 of this title.

(5) Each officer who is continued on active duty under this subsection, is not subsequently promoted or continued on active duty, and is not on a list of officers recommended for continuation or for promotion to the next higher regular grade shall, unless sooner retired or discharged under another provision of law—

(A) be discharged upon the expiration of his period of continued service; or

(B) if he is eligible for retirement under any provision of law, be retired under that law on the first day of the first month following the month in which he completes his period of continued service.

Notwithstanding the provisions of clause (A), any officer who would otherwise be discharged under such clause and is within two years of qualifying for retirement under section 3911, 6323, or 8911 of this title, shall unless he is sooner retired or discharged under some other provision of law, be retained on active duty until he is qualified for retirement under that section and then be retired.

(6) The retirement or discharge of an officer pursuant to this subsection shall be considered to be an involuntary retirement or discharge for purposes of any other provision of law.

(b)(1) An officer subject to retirement under section 633 or 634 of this title may, subject to the needs of the service, have his retirement deferred and be continued on active duty if he is selected for continuation on active duty by a selection board convened under section 611(b) of this title.

(2) An officer subject to retirement under section 635 or 636 of this title who is serving in the grade of brigadier general, rear admiral (lower half), major general, or rear admiral may, subject to the needs of the service, have his retirement deferred and be continued on active duty by the Secretary concerned. An officer subject to retirement under section 635 or 636 of this title who is serving in a grade above major general or rear admiral may have his retirement deferred and be continued on active duty by the President.

(3) Any deferral of retirement and continuation on active duty under this subsection shall be for a period not to exceed five years, but such period may not (except as provided under section 1251(b) of this title) extend beyond the date of the officer's sixty-second birthday.

(c) Continuation of an officer on active duty under this section pursuant to the action of a selection board convened under section

611(b) of this title is subject to the approval of the Secretary of the military department concerned. The period of the continuation on active duty of an officer under this section may be reduced by the Secretary concerned in the case of any officer as provided in section 638a of this title.

(d) For purposes of this section, a period of continuation on active duty under this section expires or is completed on the earlier of (1) the date originally established for the termination of such period, or (2) the date established for the termination of such period by any shortening of such period under section 638a of this title.

(e) The Secretary of Defense shall prescribe regulations for the administration of this section.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2863; amended P.L. 97–22, § 4(e), July 10, 1981, 95 Stat. 127; P.L. 97–86, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; P.L. 98–525, § 1405(15), Oct. 19, 1984, 98 Stat. 2622; P.L. 99–145, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628; P.L. 101–510, § 521(b)(1), Nov. 5, 1990, 104 Stat. 1561.)

§ 638. Selective early retirement

(a)(1) A regular officer on the active-duty list of the Army, Navy, Air Force, or Marine Corps may be considered for selective early retirement by a selection board convened under section 611(b) of this title if the officer is described in any of subparagraphs (A) through (D) as follows:

(A) An officer holding the regular grade of lieutenant colonel or commander who has failed of selection for promotion to the grade of colonel or, in the case of an officer of the Navy, captain two or more times and whose name is not on a list of officers recommended for promotion.

(B) An officer holding the regular grade of colonel or, in the case of an officer of the Navy, captain who has served at least four years of active duty in that grade and whose name is not on a list of officers recommended for promotion.

(C) An officer holding the regular grade of brigadier general or rear admiral (lower half) who has served at least three and one-half years of active duty in that grade and whose name is not on a list of officers recommended for promotion.

(D) An officer holding the regular grade of major general or rear admiral who has served at least three and one-half years of active duty in that grade.

(2) The Secretary of the military department concerned shall specify the number of officers described in paragraphs (1)(A) and (1)(B) which a selection board convened under section 611(b) of this title may recommend for early retirement. Such number may not be more than 30 percent of the number of officers considered in each grade in each competitive category.

(3) A regular officer on the active-duty list of the Army, Navy, Air Force, or Marine Corps may also be considered for early retirement under the circumstances prescribed in section 638a of this title.

(b)(1) An officer in a grade below brigadier general or rear admiral (lower half) who is recommended for early retirement under this section or section 638a of this title and whose early retirement is approved by the Secretary concerned shall—

(A) be retired, under any provision of law under which he is eligible to retire, on the date requested by him and approved

by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the Secretary concerned approves the report of the board which recommended the officer for early retirement; or

(B) if the officer is not eligible for retirement under any provision of law, be retained on active duty until he is qualified for retirement under section 3911, 6323, or 8911 of this title, and then be retired under that section, unless he is sooner retired or discharged under some other provision of law.

(2) An officer who holds the regular grade of brigadier general, major general, rear admiral (lower half), or rear admiral who is recommended for early retirement under this section and whose early retirement is approved by the Secretary concerned shall be retired, under any provision of law under which he is eligible to retire, on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the tenth calendar month beginning after the month in which the Secretary concerned approved the report of the board which recommended the officer for early retirement.

(3) The Secretary concerned may defer for not more than 90 days the retirement of an officer otherwise approved for early retirement under this section or section 638a of this title in order to prevent a personal hardship to the officer or for other humanitarian reasons. Any such deferral shall be made on a case-by-case basis considering the circumstances of the case of the particular officer concerned. The authority of the Secretary to grant such a deferral may not be delegated.

(c) So long as an officer in a grade below brigadier general or rear admiral (lower half) holds the same grade, he may not be considered for early retirement under this section more than once in any five-year period.

(d) The retirement of an officer pursuant to this section shall be considered to be an involuntary retirement for purposes of any other provision of law.

(e)(1) The Secretary of Defense shall prescribe regulations for the administration of this section.

(2)(A) Such regulations shall require that when the Secretary of the military department concerned submits a list of officers to a selection board convened under section 611(b) of this title to consider officers for selection for early retirement under this section, such list (except as provided in subparagraph (B)) shall include each officer on the active-duty list in the same grade and competitive category whose position on the active-duty list is between that of the most junior officer in that grade and competitive category whose name is submitted to the board and that of the most senior officer in that grade and competitive category whose name is submitted to the board.

(B) A list under subparagraph (A) may not include an officer in that grade and competitive category (i) who has been approved for voluntary retirement under section 3911, 6323, or 8911 of this title, or (ii) who is to be involuntarily retired under any provision of law during the fiscal year in which the selection board is convened or during the following fiscal year.

(C) An officer not considered by a selection board convened under section 611(b) of this title by reason of subparagraph (B) shall be retired on the date approved for the retirement of that officer as of the convening date of such selection board unless the Secretary concerned approves a modification of such date in order to prevent a personal hardship for the officer or for other humanitarian reasons.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2864; amended P.L. 97–22, § 4(f), July 10, 1981, 95 Stat. 127; P.L. 97–86, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; P.L. 99–145, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628; P.L. 100–456, § 504, Sept. 29, 1988, 102 Stat. 1967; P.L. 101–510, § 521(b)(2), Nov. 5, 1990, 104 Stat. 1561; P.L. 102–190, § 503(a), Dec. 5, 1991, 105 Stat. 1355; P.L. 103–160, § 506, Nov. 30, 1993, 107 Stat. 1646; P.L. 104–106, § 504(b), Feb. 10, 1996, 110 Stat. 295.)

§ 638a. Modification to rules for continuation on active duty; enhanced authority for selective early retirement and early discharges

(a) The Secretary of Defense may authorize the Secretary of a military department, during the period beginning on October 1, 1990, and ending on December 31, 2001, to take any of the actions set forth in subsection (b) with respect to officers of an armed force under the jurisdiction of that Secretary.

(b) Actions which the Secretary of a military department may take with respect to officers of an armed force when authorized to do so under subsection (a) are the following:

(1) Shortening the period of the continuation on active duty established under section 637 of this title for a regular officer who is serving on active duty pursuant to a selection under that section for continuation on active duty.

(2) Providing that regular officers on the active-duty list may be considered for early retirement by a selection board convened under section 611(b) of this title in the case of officers described in any of subparagraphs (A) through (C) as follows:

(A) Officers in the regular grade of lieutenant colonel or commander who would be subject to consideration for selection for early retirement under section 638(a)(1)(A) of this title except that they have failed of selection for promotion only one time (rather than two or more times).

(B) Officers in the regular grade of colonel or, in the case of the Navy, captain who would be subject to consideration for selection for early retirement under section 638(a)(1)(B) of this title except that they have served on active duty in that grade less than four years (but not less than two years).

(C) Officers, other than those described in subparagraphs (A) and (B), holding a regular grade below the grade of colonel, or in the case of the Navy, captain, who are eligible for retirement under section 3911, 6323, or 8911 of this title, or who after two additional years or less of active service would be eligible for retirement under one of those sections and whose names are not on a list of officers recommended for promotion.

(3) Suspending section 638(c) of this title.

(4) Convening selection boards under section 611(b) of this title to consider for discharge regular officers on the active-duty list in a grade below lieutenant colonel or commander—

(A) who have served at least one year of active duty in the grade currently held;

(B) whose names are not on a list of officers recommended for promotion; and

(C) who are not eligible to be retired under any provision of law (other than by reason of eligibility pursuant to section 4403 of the National Defense Authorization Act for Fiscal Year 1993) and are not within two years of becoming so eligible.

(c)(1) In the case of an action under subsection (b)(2), the Secretary of the military department concerned shall specify the number of officers described in that subsection which a selection board convened under section 611(b) of this title pursuant to the authority of that subsection may recommend for early retirement. Such number may not be more than 30 percent of the number of officers considered in each grade in each competitive category.

(2) In the case of an action authorized under subsection (b)(2), the Secretary of Defense may also authorize the Secretary of the military department concerned when convening a selection board under section 611(b) of this title to consider regular officers on the active-duty list for early retirement to include within the officers to be considered by the board reserve officers on the active-duty list on the same basis as regular officers.

(3) In the case of an action under subsection (b)(2), the Secretary of the military department concerned may submit to a selection board convened pursuant to that subsection—

(A) the names of all eligible officers described in that subsection in a particular grade and competitive category; or

(B) the names of all eligible officers described in that subsection in a particular grade and competitive category who are also in particular year groups, specialties, or retirement categories, or any combination thereof, within that competitive category.

(d)(1) In the case of an action under subsection (b)(4), the Secretary of the military department concerned may submit to a selection board convened pursuant to that subsection—

(A) the names of all officers described in that subsection in a particular grade and competitive category; or

(B) the names of all officers described in that subsection in a particular grade and competitive category who also are in particular year groups or specialties, or both, within that competitive category.

(2) The Secretary concerned shall specify the total number of officers to be recommended for discharge by a selection board convened pursuant to subsection (b)(4). That number may not be more than 30 percent of the number of officers considered—

(A) in each grade in each competitive category; or

(B) in each grade, year group, or specialty (or combination thereof) in each competitive category.

(3) The total number of officers described in subsection (b)(4) from any of the armed forces (or from any of the armed forces in

a particular grade) who may be recommended during a fiscal year for discharge by a selection board convened pursuant to the authority of that subsection may not exceed 70 percent of the decrease, as compared to the preceding fiscal year, in the number of officers of that armed force (or the number of officers of that armed force in that grade) authorized to be serving on active duty as of the end of that fiscal year.

(4) An officer who is recommended for discharge by a selection board convened pursuant to the authority of subsection (b)(4) and whose discharge is approved by the Secretary concerned shall be discharged on a date specified by the Secretary concerned.

(5) Selection of officers for discharge under this subsection shall be based on the needs of the service.

(e) The discharge or retirement of an officer pursuant to this section shall be considered to be involuntary for purposes of any other provision of law.

(Added P.L. 101–510, § 521(a)(1), Nov. 5, 1990, 104 Stat. 1561; amended P.L. 102–190, § 503(b), Dec. 5, 1991, 105 Stat. 1355; P.L. 102–484, §§ 503, 4403(g)(2), Oct. 23, 1992, 106 Stat. 2402, 2703; P.L. 103–160, § 561(b), Nov. 30, 1993, 107 Stat. 1667; P.L. 105–261, § 561(c), Oct. 17, 1998, 112 Stat. 2025; P.L. 106–398, § 1[571(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–134.)

§ 639. Continuation on active duty to complete disciplinary action

When any action has been commenced against an officer with a view to trying such officer by court-martial and such officer is to be separated or retired in accordance with this chapter, the Secretary of the military department concerned may delay the separation or retirement of the officer, without prejudice to such action, until the completion of the action.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2866.)

§ 640. Deferment of retirement or separation for medical reasons

The Secretary of the military department concerned may defer the retirement or separation under this title of any officer if the evaluation of the physical condition of the officer and determination of the officer's entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date on which the officer would otherwise be required to retire or be separated under this title.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2866.)

SUBCHAPTER V—ADDITIONAL PROVISIONS RELATING TO PROMOTION, SEPARATION, AND RETIREMENT

Sec.
641. Applicability of chapter.
642. Entitlement of officers discharged or retired under this chapter to separation pay or retired pay.
643. Chaplains: discharge or retirement upon loss of professional qualifications.
[644. Repealed.]
645. Definitions.
646. Consideration of performance as a member of the Joint Staff.

§ 641. Applicability of chapter

Officers in the following categories are not subject to this chapter (other than section 640 and, in the case of warrant officers, section 628):

(1) Reserve officers—

(A) on active duty for training;

(B) on active duty under section 3038, 5143, 5144, 8038, 10211, 10301 through 10305, 10502, 10505, 10506(a), 10506(b), 10507, or 12402 of this title or section 708 of title 32;

(C) on active duty under section 12301(d) of this title in connection with organizing, administering, recruiting, instructing, or training the reserve components;

(D) on the reserve active-status list who are on active duty under section 12301(d) of this title, other than as provided in subparagraph (C), under a call or order to active duty specifying a period of three years or less;

(E) on active duty to pursue special work;

(F) ordered to active duty under section 12304 of this title;

(G) on active duty under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) for the administration of the Selective Service System; or

(H) on full-time National Guard duty.

(2) The director of admissions, dean, and permanent professors at the United States Military Academy and the registrar, dean, and permanent professors at the United States Air Force Academy.

(3) Warrant officers.

(4) Retired officers on active duty.

(5) Students at the Uniformed Services University of the Health Sciences.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2866; amended P.L. 98–525, §§ 414(a)(5), 527(b), Oct. 19, 1984, 98 Stat. 2519, 2525; P.L. 99–433, § 531(a)(2), Oct. 1, 1986, 100 Stat. 1063; P.L. 103–337, §§ 1624, 1671(c)(5), Oct. 5, 1994, 108 Stat. 2961, 3014; P.L. 104–106, § 1501(c)(6), Feb. 10, 1996, 110 Stat. 498; P.L. 104–201, § 1212(e), Sept. 23, 1996, 110 Stat. 2694; P.L. 106–398, § 1[521], Oct. 30, 2000, 114 Stat. 1654, 1654A–108.)

§ 642. Entitlement of officers discharged or retired under this chapter to separation pay or retired pay

(a) An officer who is discharged under this chapter is entitled, if eligible therefor, to separation pay under section 1174 of this title.

(b) An officer who is retired under this chapter is entitled to retired pay computed under chapter 71 of this title.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2867.)

§ 643. Chaplains: discharge or retirement upon loss of professional qualifications

Under regulations prescribed by the Secretary of Defense, a commissioned officer on the active-duty list of the Army, Navy, or Air Force who is appointed or designated as a chaplain may, if he fails to maintain the qualifications needed to perform his profes-

sional function, be discharged or, if eligible for retirement, may be retired.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2867.)

[§ 644. Repealed. P.L. 103–337, § 1622(b), Oct. 5, 1994, 108 Stat. 2961 (see sec. 123)]

§ 645. Definitions

In this chapter:

(1) The term "promotion zone" means a promotion eligibility category consisting of the officers on an active-duty list in the same grade and competitive category—

(A) who—

(i) in the case of officers in grades below colonel, for officers of the Army, Air Force, and Marine Corps, or captain, for officers of the Navy, have neither (I) failed of selection for promotion to the next higher grade, nor (II) been removed from a list of officers recommended for promotion to that grade (other than after having been placed on that list after a selection from below the promotion zone); or

(ii) in the case of officers in the grade of colonel or brigadier general, for officers of the Army, Air Force, and Marine Corps, or captain or rear admiral (lower half), for officers of the Navy, have neither (I) not been recommended for promotion to the next higher grade when considered in the promotion zone, nor (II) been removed from a list of officers recommended for promotion to that grade (other than after having been placed on that list after a selection from below the promotion zone); and

(B) are senior to the officer designated by the Secretary of the military department concerned to be the junior officer in the promotion zone eligible for consideration for promotion to the next higher grade.

(2) The term "officers above the promotion zone" means a group of officers on an active-duty list in the same grade and competitive category who—

(A) are eligible for consideration for promotion to the next higher grade;

(B) are in the same grade as those officers in the promotion zone for that competitive category; and

(C) are senior to the senior officer in the promotion zone for that competitive category.

(3) The term "officers below the promotion zone" means a group of officers on the active-duty list in the same grade and competitive category who—

(A) are eligible for consideration for promotion to the next higher grade;

(B) are in the same grade as the officers in the promotion zone for that competitive category; and

(C) are junior to the junior officer in the promotion zone for that competitive category.

(Added P.L. 96–513, § 105, Dec. 12, 1980, 94 Stat. 2867; amended P.L. 97–86, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; P.L. 98–525, § 533(a), Oct. 19, 1984, 98 Stat. 2528; P.L. 99–145, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628; P.L. 102–25, § 701(i)(1), April 6, 1991, 105 Stat. 115.)

§ 646. Consideration of performance as a member of the Joint Staff

The Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, shall ensure that officer personnel polices of the Army, Navy, Air Force, and Marine Corps concerning promotion, retention, and assignment give appropriate consideration to the performance of an officer as a member of the Joint Staff.

(Added P.L. 98–525, § 1301, Oct. 19, 1984, 94 Stat. 2612.)

CHAPTER 37—GENERAL SERVICE REQUIREMENTS

Sec.
651. Members: required service.
[652. Repealed.]
653. Minimum service requirement for certain flight crew positions.
654. Policy concerning homosexuality in the armed forces.
655. Designation of persons having interest in status of a missing member.

§ 651. Members: required service

(a) Each person who becomes a member of an armed force, other than a person deferred under the next to the last sentence of section 6(d)(1) of the Military Selective Service Act (50 U.S.C. App. 456(d)(1)) shall serve in the armed forces for a total initial period of not less than six years nor more than eight years, as provided in regulations prescribed by the Secretary of Defense for the armed forces under his jurisdiction and by the Secretary of Transportation for the Coast Guard when it is not operating as a service in the Navy, unless such person is sooner discharged under such regulations because of personal hardship. Any part of such service that is not active duty or that is active duty for training shall be performed in a reserve component.

(b) Each person covered by subsection (a) who is not a Reserve, and who is qualified, shall, upon his release from active duty, be transferred to a reserve component of his armed force to complete the service required by subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 27; Sept. 2, 1958, P.L. 85–861, §§ 1(12), 36B(3), 72 Stat. 1440, 1570; Nov. 2, 1966, P.L. 89–718, § 5, 80 Stat. 1115; July 30, 1977, P.L. 95–79, § 803(a), 91 Stat. 333; Nov. 9, 1979, P.L. 96–107, § 805(b), 93 Stat. 813; Dec. 12, 1980, P.L. 96–513, § 511(18), 94 Stat. 2921; P.L. 98–94, § 1022(b)(1), Sept. 24, 1983, 97 Stat. 670.)

[§ 652. Repealed. P.L. 103–337, § 1661(a)(3)(A), Oct. 5, 1994, 108 Stat. 2980]

§ 653. Minimum service requirement for certain flight crew positions

(a) PILOTS.—The minimum service obligation of any member who successfully completes training in the armed forces as a pilot shall be 8 years, if the member is trained to fly fixed-wing jet aircraft, or 6 years, if the member is trained to fly any other type of aircraft.

(b) NAVIGATORS AND NAVAL FLIGHT OFFICERS.—The minimum service obligation of any member who successfully completes training in the armed forces as a navigator or naval flight officer shall be 6 years.

(c) DEFINITION.—In this section, the term "service obligation" means the period of active duty or, in the case of a member of a reserve component who completed flight training in an active duty for training status as a member of a reserve component, the period of service in an active status in the Selected Reserve—

(1) completion of undergraduate pilot training, in the case of training as a pilot;

(2) completion of undergraduate navigator training, in the case of training as a navigator; or

(3) completion of undergraduate training as a naval flight officer, in the case of training as a naval flight officer.

(Added P.L. 101–189, § 634(a)(2), Nov. 29, 1990, 103 Stat. 1454; amended P.L. 101–510, § 1484(k)(3), Nov. 5, 1990, 104 Stat. 1719; P.L. 102–484, § 506(a), Oct. 23, 1992, 106 Stat. 2404.)

§ 654. Policy concerning homosexuality in the armed forces

(a) FINDINGS.—Congress makes the following findings:

(1) Section 8 of article I of the Constitution of the United States commits exclusively to the Congress the powers to raise and support armies, provide and maintain a Navy, and make rules for the government and regulation of the land and naval forces.

(2) There is no constitutional right to serve in the armed forces.

(3) Pursuant to the powers conferred by section 8 of article I of the Constitution of the United States, it lies within the discretion of the Congress to establish qualifications for and conditions of service in the armed forces.

(4) The primary purpose of the armed forces is to prepare for and to prevail in combat should the need arise.

(5) The conduct of military operations requires members of the armed forces to make extraordinary sacrifices, including the ultimate sacrifice, in order to provide for the common defense.

(6) Success in combat requires military units that are characterized by high morale, good order and discipline, and unit cohesion.

(7) One of the most critical elements in combat capability is unit cohesion, that is, the bonds of trust among individual service members that make the combat effectiveness of a military unit greater than the sum of the combat effectiveness of the individual unit members.

(8) Military life is fundamentally different from civilian life in that—

(A) the extraordinary responsibilities of the armed forces, the unique conditions of military service, and the critical role of unit cohesion, require that the military community, while subject to civilian control, exist as a specialized society; and

(B) the military society is characterized by its own laws, rules, customs, and traditions, including numerous restrictions on personal behavior, that would not be acceptable in civilian society.

(9) The standards of conduct for members of the armed forces regulate a member's life for 24 hours each day beginning at the moment the member enters military status and not ending until that person is discharged or otherwise separated from the armed forces.

(10) Those standards of conduct, including the Uniform Code of Military Justice, apply to a member of the armed

forces at all times that the member has a military status, whether the member is on base or off base, and whether the member is on duty or off duty.

(11) The pervasive application of the standards of conduct is necessary because members of the armed forces must be ready at all times for worldwide deployment to a combat environment.

(12) The worldwide deployment of United States military forces, the international responsibilities of the United States, and the potential for involvement of the armed forces in actual combat routinely make it necessary for members of the armed forces involuntarily to accept living conditions and working conditions that are often spartan, primitive, and characterized by forced intimacy with little or no privacy.

(13) The prohibition against homosexual conduct is a longstanding element of military law that continues to be necessary in the unique circumstances of military service.

(14) The armed forces must maintain personnel policies that exclude persons whose presence in the armed forces would create an unacceptable risk to the armed forces' high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.

(15) The presence in the armed forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.

(b) POLICY.—A member of the armed forces shall be separated from the armed forces under regulations prescribed by the Secretary of Defense if one or more of the following findings is made and approved in accordance with procedures set forth in such regulations:

(1) That the member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts unless there are further findings, made and approved in accordance with procedures set forth in such regulations, that the member has demonstrated that—

(A) such conduct is a departure from the member's usual and customary behavior;

(B) such conduct, under all the circumstances, is unlikely to recur;

(C) such conduct was not accomplished by use of force, coercion, or intimidation;

(D) under the particular circumstances of the case, the member's continued presence in the armed forces is consistent with the interests of the armed forces in proper discipline, good order, and morale; and

(E) the member does not have a propensity or intent to engage in homosexual acts.

(2) That the member has stated that he or she is a homosexual or bisexual, or words to that effect, unless there is a further finding, made and approved in accordance with procedures set forth in the regulations, that the member has demonstrated that he or she is not a person who engages in, at-

tempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

(3) That the member has married or attempted to marry a person known to be of the same biological sex.

(c) ENTRY STANDARDS AND DOCUMENTS.—(1) The Secretary of Defense shall ensure that the standards for enlistment and appointment of members of the armed forces reflect the policies set forth in subsection (b).

(2) The documents used to effectuate the enlistment or appointment of a person as a member of the armed forces shall set forth the provisions of subsection (b).

(d) REQUIRED BRIEFINGS.—The briefings that members of the armed forces receive upon entry into the armed forces and periodically thereafter under section 937 of this title (article 137 of the Uniform Code of Military Justice) shall include a detailed explanation of the applicable laws and regulations governing sexual conduct by members of the armed forces, including the policies prescribed under subsection (b).

(e) RULE OF CONSTRUCTION.—Nothing in subsection (b) shall be construed to require that a member of the armed forces be processed for separation from the armed forces when a determination is made in accordance with regulations prescribed by the Secretary of Defense that—

(1) the member engaged in conduct or made statements for the purpose of avoiding or terminating military service; and

(2) separation of the member would not be in the best interest of the armed forces.

(f) DEFINITIONS.—In this section:

(1) The term "homosexual" means a person, regardless of sex, who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts, and includes the terms "gay" and "lesbian".

(2) The term "bisexual" means a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual and heterosexual acts.

(3) The term "homosexual act" means—

(A) any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires; and

(B) any bodily contact which a reasonable person would understand to demonstrate a propensity or intent to engage in an act described in subparagraph (A).

(Added P.L. 103–160, § 571(a)(1), Nov. 30, 1993, 107 Stat. 1670.)

§ 655. Designation of persons having interest in status of a missing member

(a) The Secretary concerned shall, upon the enlistment or appointment of a person in the armed forces, require that the person specify in writing the person or persons, if any, other than that person's primary next of kin or immediate family, to whom information on the whereabouts and status of the member shall be provided if such whereabouts and status are investigated under chapter 76 of this title. The Secretary shall periodically, and whenever the member is deployed as part of a contingency operation or in

other circumstances specified by the Secretary, require that such designation be reconfirmed, or modified, by the member.

(b) The Secretary concerned shall, upon the request of a member, permit the member to revise the person or persons specified by the member under subsection (a) at any time. Any such revision shall be in writing.

(Added P.L. 104–106, § 569(d)(1), Feb. 10, 1996, 107 Stat. 352.)

CHAPTER 38—JOINT OFFICER MANAGEMENT

Sec.
661. Management policies for joint specialty officers.
662. Promotion policy objectives for joint officers.
663. Education.
664. Length of joint duty assignments.
665. Procedures for monitoring careers of joint officers.
666. Reserve officers not on the active-duty list.
667. Annual report to Congress.
668. Definitions.

§ 661. Management policies for joint specialty officers

(a) ESTABLISHMENT.—The Secretary of Defense shall establish policies, procedures, and practices for the effective management of officers of the Army, Navy, Air Force, and Marine Corps on the active-duty list who are particularly trained in, and oriented toward, joint matters (as defined in section 668 of this title). Such officers shall be identified or designated (in addition to their principal military occupational specialty) in such manner as the Secretary of Defense directs. For purposes of this chapter, officers to be managed by such policies, procedures, and practices are referred to as having, or having been nominated for, the "joint specialty".

(b) NUMBERS AND SELECTION.—(1) The number of officers with the joint specialty shall be determined by the Secretary. Such number shall be large enough to meet the requirements of subsection (d).

(2) Officers shall be selected for the joint specialty by the Secretary of Defense with the advice of the Chairman of the Joint Chiefs of Staff. The Secretaries of the military departments shall nominate officers for selection for the joint specialty. Nominations shall be made from among officers—

(A) who meet qualifications prescribed by the Secretary of Defense; and

(B) who—

(i) are senior captains or, in the case of the Navy, senior lieutenants; or

(ii) are serving in the grade of major or lieutenant commander or a higher grade.

(3) The authority of the Secretary of Defense under paragraph (2) to select officers for the joint specialty may be delegated only to the Deputy Secretary of Defense.

(c) EDUCATION AND EXPERIENCE REQUIREMENTS.—(1) An officer who is nominated for the joint specialty may not be selected for the joint specialty until the officer—

(A) successfully completes an appropriate program at a joint professional military education school; and

(B) after completing such program of education, successfully completes a full tour of duty in a joint duty assignment

(as described in section 664(f) of this title (other than in paragraph (2) thereof)).

(2)(A) An officer (other than a general or flag officer) who has a military occupational specialty that is a critical occupational specialty involving combat operations (as designated by the Secretary of Defense) and who is nominated for the joint specialty may be selected for the joint specialty after successful completion of a full tour of duty in a joint duty assignment (as described in section 664(f)(2) of this title) and successful completion of a program under paragraph (1)(A).

(B) The Secretary may not for the purposes of this paragraph designate a military occupational specialty as a critical occupational specialty involving combat operations unless that occupational specialty is within the combat arms, in the case of the Army, or the equivalent, in the case of the Navy, Air Force, and Marine Corps. In determining for the purposes of this paragraph what military occupational specialties within the combat arms (or the equivalent) are critical, the Secretary shall designate as critical any military occupational specialty experiencing severe shortages of trained officers.

(3)(A) In the case of an officer who has completed both a program of education referred to in paragraph (1)(A) and a full tour of duty in a joint duty assignment (as described in section 664(f) of this title (other than in paragraph (2) thereof)) and is subsequently nominated for the joint specialty, the Secretary of Defense may waive the requirement in paragraph (1)(B) that the tour of duty in a joint duty assignment be performed after the officer completes the program of education if the Secretary determines that the waiver is necessary in the interests of sound personnel management.

(B) In the case of an officer who has completed two full tours of duty in a joint duty assignment (as described in section 664(f) of this title) and is subsequently nominated for the joint specialty, the Secretary may waive the requirement that the officer have successfully completed a program of education referred to in paragraph (1)(A) if the Secretary determines that—

(i) it would be impractical to require the officer to complete such a program at the current stage of the officer's career; and

(ii) the types of joint duty assignments completed by the officer have been of sufficient breadth to prepare the officer adequately for the joint specialty.

(C) A waiver under subparagraph (A) or (B) may be made only under unusual circumstances justifying deviation from the conditions established in paragraph (1) for selection of an officer for the joint specialty.

(D) The authority of the Secretary of Defense to grant a waiver under this paragraph may be delegated only to the Deputy Secretary of Defense. Such a waiver may be granted only on a case-by-case basis in the case of an individual officer and in the case of a general or flag officer only under exceptional circumstances in which the waiver is necessary to meet a critical need of the armed forces, as determined by the Chairman of the Joint Chiefs of Staff. In the case of officers in grades below brigadier general and rear admiral (lower half), the total number of waivers granted under

this paragraph for officers in the same pay grade during any fiscal year may not exceed 10 percent of the total number of officers in that pay grade selected for the joint specialty during that fiscal year.

(E) There may not be more than 32 general and flag officers on active duty at the same time who were selected for the joint specialty while holding a general or flag officer grade and for whom a waiver was granted under this subparagraph.

(4) For purposes of this chapter, a school that is organized within, and operated by, a military department may not be construed to be a joint professional military education school.

(d) NUMBER OF JOINT DUTY ASSIGNMENTS.—(1) The Secretary of Defense shall ensure that approximately one-half of the joint duty assignment positions in grades above captain or, in the case of the Navy, lieutenant are filled at any time by officers who—

(A) have the joint specialty; or

(B) have been nominated for the joint specialty and—

(i) have successfully completed a program of education referred to in subsection (c)(1)(A); or

(ii) have a military occupational specialty that is designated under subsection (c)(2)(A) as a critical occupational specialty involving combat operations.

(2)(A) The Secretary shall designate not fewer than 800 joint duty assignment positions as critical joint duty assignment positions. Such designation shall be made by examining each joint duty assignment position and designating under the preceding sentence those positions for which, considering the duties and responsibilities of the position, it is highly important that the occupant be particularly trained in, and oriented toward, joint matters.

(B) Each position designated by the Secretary under subparagraph (A) may (subject to subparagraph (C)) be held only by an officer who has the joint specialty.

(C) The Secretary of Defense may, on a case-by-case basis, waive the requirement in subparagraph (B) with respect to a particular assignment of an officer to a position designated as a critical joint duty assignment position. The authority of the Secretary to make such a waiver may be delegated only to the Chairman of the Joint Chiefs of Staff.

(3)(A) The Secretary shall ensure that, of those joint duty assignment positions that are filled by general or flag officers, a substantial portion are among those positions that are designated under paragraph (2) as critical joint duty assignment positions.

(B) The Secretary shall ensure that, of those positions designated under paragraph (2) as critical joint duty assignment positions, an appropriate portion are filled by officers with the joint specialty who were selected for the joint specialty under subsection (c)(2).

(4) Of the officers serving in joint duty assignment positions covered by paragraph (1) who are described in subparagraph (A) or (B) of that paragraph, not more than 25 percent at any time may be officers described in subparagraph (B)(ii) of that paragraph.

(e) CAREER GUIDELINES.—The Secretary, with the advice of the Chairman of the Joint Chiefs of Staff, shall establish career guide-

lines for officers with the joint specialty. Such guidelines shall include guidelines for—

(1) selection;

(2) military education;

(3) training;

(4) types of duty assignments; and

(5) such other matters as the Secretary considers appropriate.

(f) TREATMENT OF CERTAIN SERVICE.—Any service by an officer in the grade of captain or, in the case of the Navy, lieutenant in a joint duty assignment shall be considered to be service in a joint duty assignment for purposes of all laws (including section 619(e)(1) of this title) establishing a requirement or condition with respect to an officer's service in a joint duty assignment.

(Added P.L. 99–433, § 401, Oct. 1, 1986, 100 Stat. 1025; amended P.L. 100–180, §§ 1301, 1302(a), (b), Dec. 4, 1987, 101 Stat. 1168, 1169; P.L. 100–456, §§ 511, 512(a), 517(a), 518, Sept. 29, 1988, 102 Stat. 1968, 1971; P.L. 101–189, §§ 1113, 1122, Nov. 29, 1989, 103 Stat. 1554, 1556; P.L. 104–106, §§ 501(a),(d), 1503(a)(6), Feb. 10, 1996, 110 Stat. 290, 292, 511.)

§ 662. Promotion policy objectives for joint officers

(a) QUALIFICATIONS.—The Secretary of Defense shall ensure that the qualifications of officers assigned to joint duty assignments are such that—

(1) officers who are serving on, or have served on, the Joint Staff are expected, as a group, to be promoted to the next higher grade at a rate not less than the rate for officers of the same armed force in the same grade and competitive category who are serving on, or have served on, the headquarters staff of their armed force;

(2) officers who have the joint specialty are expected, as a group, to be promoted at a rate not less than the rate for officers of the same armed force in the same grade and competitive category who are serving on, or have served on, the headquarters staff of their armed force; and

(3) officers who are serving in, or have served in, joint duty assignments (other than officers covered in paragraphs (1) and (2)) are expected, as a group, to be promoted to the next higher grade at a rate not less than the rate for all officers of the same armed force in the same grade and competitive category.

(b) ANNUAL REPORT.—Not later than January 1 of each year, the Secretary of Defense shall submit to Congress a report on the promotion rates during the preceding fiscal year of officers who are serving in, or have served in, joint duty assignments, especially with respect to the record of officer selection boards in meeting the objectives of paragraphs (1), (2), and (3) of subsection (a). If such promotion rates fail to meet such objectives for any fiscal year, the Secretary shall include in the report for that fiscal year information on such failure and on what action the Secretary has taken or plans to take to prevent further failures.

(Added P.L. 99–433, § 401(a), Oct. 1, 1986, 100 Stat. 1026; amended P.L. 100–456, § 513, Sept. 29, 1988, 102 Stat. 1969; P.L. 101–510, § 1311(3), Nov. 5, 1990, 104 Stat. 1669; P.L. 104–201, § 510(a), (b), Sept. 23, 1996, 110 Stat. 2514.)

§ 663. Education [1]

(a) CAPSTONE COURSE FOR NEW GENERAL AND FLAG OFFICERS.—(1) Each officer selected for promotion to the grade of brigadier general or, in the case of the Navy, rear admiral (lower half) shall be required, after such selection, to attend a military education course designed specifically to prepare new general and flag officers to work with the other armed forces.

(2) Subject to paragraph (3), the Secretary of Defense may waive paragraph (1)—

(A) in the case of an officer whose immediately previous assignment was in a joint duty assignment and who is thoroughly familiar with joint matters;

(B) when necessary for the good of the service;

(C) in the case of an officer whose proposed selection for promotion is based primarily upon scientific and technical qualifications for which joint requirements do not exist (as determined under regulations prescribed under section 619(e)(4) of this title); and

(D) in the case of a medical officer, dental officer, veterinary officer, medical service officer, nurse, biomedical science officer, or chaplain.

(3) The authority of the Secretary of Defense to grant a waiver under paragraph (2) may only be delegated to the Deputy Secretary of Defense, an Under Secretary of Defense, or an Assistant Sec-

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[1] Subsections (a) and (b) of section 1123 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (P.L. 101–189; 103 Stat. 1556), approved Nov. 29, 1989, provide:

(a) EXISTING EFFORTS TO IMPROVE PROFESSIONAL MILITARY EDUCATION.—(1) The Goldwater-Nichols Department of Defense Reorganization Act of 1986 (Public Law 99–433; 100 Stat. 992) mandated—

(A) the strengthening of the focus on joint matters in courses of instruction offered by professional military education schools operated by the military departments; and

(B) the maintenance of rigorous standards at joint professional military education schools for the education of joint specialty officers.

(2) Congress applauds the actions taken since 1986 by the Secretary of Defense and the Chairman of the Joint Chiefs of Staff, consistent with such mandate, to improve professional military education provided by intermediate and senior professional military education schools.

(b) STATEMENT OF CONGRESSIONAL POLICY.—As part of the efforts of the Secretary of Defense to improve professional military education, Congress urges, as a matter of policy, and fully expects the Secretary to establish the following:

(1) A coherent and comprehensive framework for the education of officers, including officers nominated for the joint specialty.

(2) A two-phase approach to strengthening the focus on joint matters, as follows:

(A) Phase I instruction consisting of a joint curriculum, in addition to the principal curriculum taught to all officers at service-operated professional military education schools.

(B) Phase II instruction consisting of a follow-on, solely joint curriculum taught at the Armed Forces Staff College to officers who are expected to be selected for the joint specialty. The curriculum should emphasize multiple "hands on" exercises and must adequately prepare students to perform effectively from the outset in what will probably be their first exposure to a totally new environment, an assignment to a joint, multiservice organization. Phase II instruction should be structured so that students progress from a basic knowledge of joint matters learned in Phase I to the level of expertise necessary for successful performance in the joint arena.

(3) A sequenced approach to joint education in which the norm would require an officer to complete Phase I instruction before proceeding to Phase II instruction. An exception to the normal sequence should be granted by the Chairman of the Joint Chiefs of Staff only on a case-by-case basis for compelling cause. Officers selected to receive such an exception should be required to demonstrate a basic knowledge of joint matters and other aspects of the Phase I curriculum that qualifies them to meet the minimum requirements established for entry into Phase II instruction without first completing Phase I instruction. The number of officers selected to attend an offering of the principal course of instruction at the Armed Forces Staff College who have not completed Phase I instruction should comprise only a small portion of the total number of officers selected.

retary of Defense. Such a waiver may be granted only on a case-by-case basis in the case of an individual officer.

(b) JOINT MILITARY EDUCATION SCHOOLS.—The Secretary of Defense, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, shall periodically review and revise the curriculum of each school of the National Defense University (and of any other joint professional military education school) to enhance the education and training of officers in joint matters. The Secretary shall require such schools to maintain rigorous standards for the military education of officers with the joint specialty.

(c) OTHER PROFESSIONAL MILITARY EDUCATION SCHOOLS.—The Secretary of Defense shall require that each Department of Defense school concerned with professional military education periodically review and revise its curriculum for senior and intermediate grade officers in order to strengthen the focus on—

(1) joint matters; and

(2) preparing officers for joint duty assignments.

(d) POST-EDUCATION JOINT DUTY ASSIGNMENTS.—(1) The Secretary of Defense shall ensure that each officer with the joint specialty who graduates from a joint professional military education school shall be assigned to a joint duty assignment for that officer's next duty assignment after such graduation (unless the officer receives a waiver of that requirement by the Secretary in an individual case).

(2)(A) The Secretary of Defense shall ensure that a high proportion (which shall be greater than 50 percent) of the officers graduating from a joint professional military education school who do not have the joint specialty shall receive assignments to a joint duty assignment as their next duty assignment after such graduation or, to the extent authorized in subparagraph (B), as their second duty assignment after such graduation.

(B) The Secretary may, if the Secretary determines that it is necessary to do so for the efficient management of officer personnel, establish procedures to allow up to one-half of the officers subject to the joint duty assignment requirement in subparagraph (A) to be assigned to a joint duty assignment as their second (rather than first) assignment after such graduation from a joint professional military education school.

(e) DURATION OF PRINCIPAL COURSE OF INSTRUCTION AT ARMED FORCES STAFF COLLEGE.—(1) The duration of the principal course of instruction offered at the Armed Forces Staff College[2] may not be less than three months.

(2) In this subsection, the term "principal course of instruction" means any course of instruction offered at the Armed Forces Staff College[2] as Phase II joint professional military education.

(Added P.L. 99–433, § 401(a), Oct. 1, 1985, 100 Stat. 1027; amended P.L. 101–189, § 1123(c)(1), Nov. 29, 1989, 103 Stat. 1557; P.L. 102–190, § 912(a), Dec. 5, 1991, 105 Stat. 1452; P.L. 103–160, § 933(a), Nov. 30, 1993, 107 Stat. 1735.)

§ 664. Length of joint duty assignments

(a) GENERAL RULE.—The length of a joint duty assignment—

[2] The Armed Forces Staff College was renamed the Joint Forces Staff College by section 913 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654A–230).

(1) for general and flag officers shall be not less than two years; and

(2) for other officers shall be not less than three years.

(b) WAIVER AUTHORITY.—The Secretary of Defense may waive subsection (a) in the case of any officer.

(c) INITIAL ASSIGNMENT OF OFFICERS WITH CRITICAL OCCUPATIONAL SPECIALTIES.—The Secretary may for purposes of section 661(c)(2) of this title authorize a joint duty assignment of less than the period prescribed by subsection (a), but not less than two years, without the requirement of a waiver under subsection (b) in the case of an officer—

(1) who is nominated for the joint specialty;

(2) who has a military occupational specialty designated under section 661(c)(2) of this title as a critical occupational specialty; and

(3) for whom such joint duty assignment is the initial joint duty assignment.

(d) EXCLUSIONS FROM TOUR LENGTH.—The Secretary of Defense may exclude the following service from the standards prescribed in subsection (a):

(1) Service in a joint duty assignment in which the full tour of duty in the assignment is not completed by the officer because of—

(A) retirement;

(B) release from active duty;

(C) suspension from duty under section 155(f)(2) or 164(g) of this title; or

(D) a qualifying reassignment (as described in subsection (g)(4)).

(2) Service in a joint duty assignment outside the United States or in Alaska or Hawaii which is less than the applicable standard prescribed in subsection (a).

(3) Service in a joint duty assignment in a case in which—

(A) the officer's tour of duty in that assignment brings the officer's cumulative service for purposes of subsection (f)(3) to the applicable standard prescribed in subsection (a); and

(B) the length of time served in that assignment (in any case other than an assignment which is described in subsection (g)(4)(B)) was not less than two years.

(e) AVERAGE TOUR LENGTHS.—(1) The Secretary shall ensure that the average length of joint assignments during any fiscal year, measured by the lengths of the joint duty assignments ending during that fiscal year, meets the standards prescribed in subsection (a).

(2) In computing the average length of joint duty assignments for purposes of paragraph (1), the Secretary may exclude the following service:

(A) Service described in subsection (c), except that no more than 12½ percent of all joint duty assignments shown on the list published pursuant to section 668(b)(2)(A) of this title may be so excluded in any year.

(B) Service described in subsection (d).

(C) Service described in subsection (f)(6), except that no more than 10 percent of all joint duty assignments shown on the list published pursuant to section 668(b)(2)(A) of this title may be so excluded in any year.

(f) FULL TOUR OF DUTY.—An officer shall be considered to have completed a full tour of duty in a joint duty assignment upon completion of any of the following:

(1) A joint duty assignment that meets the standards prescribed in subsection (a).

(2) A joint duty assignment under the circumstances described in subsection (c).

(3) Cumulative service in joint duty assignments as described in subsection (g).

(4) A joint duty assignment outside the United States or in Alaska or Hawaii for which the normal accompanied-by-dependents tour of duty is prescribed by regulation to be at least two years in length, if the officer serves in the assignment for a period equivalent to the accompanied-by-dependents tour length (except that not more than 6 percent of all joint duty assignments may be considered to be under this paragraph at any time).

(5) A joint duty assignment with respect to which the Secretary of Defense has granted a waiver under subsection (b), but only in a case in which the Secretary determines that the service completed by that officer in that duty assignment shall be considered to be a full tour of duty in a joint duty assignment.

(6) A second joint duty assignment that is less than the period required under subsection (a), but not less than two years, without regard to whether a waiver was granted for such assignment under subsection (b).

(g) CUMULATIVE CREDIT.—(1) Cumulative service for purposes of subsection (f)(3) is service in joint duty assignments which totals in length no less than the applicable standard prescribed in subsection (a) and which includes at least one tour of duty in a joint duty assignment that—

(A) was performed outside the United States or in Alaska or Hawaii; or

(B) was terminated because of a qualifying reassignment (as described in paragraph (4)).

(2) In computing cumulative service of an officer in joint duty assignments for purposes of paragraph (1), a tour of duty of the officer in a joint duty assignment other than a tour of duty specified in subparagraph (A) or (B) of paragraph (1) may not be counted unless the officer served at least two years in the assignment. The prohibition on counting certain tours of duty in the preceding sentence does not apply to a joint duty assignment which follows a reassignment described in paragraph (4)(B).

(3) In computing the cumulative service of an officer in joint duty assignments for purposes of paragraph (1), a tour of duty in a joint duty assignment shall be excluded if the officer served less than 10 months in that assignment.

(4) For purposes of paragraph (1)(B), a qualifying reassignment is a reassignment of an officer from a joint duty assignment—

(A) for unusual personal reasons (including extreme hardship and medical conditions) beyond the control of the officer or the armed forces; or

(B) to another joint duty assignment immediately after—

(i) the officer was promoted to a higher grade if the reassignment was made because no joint duty assignment was available within the same organization that was commensurate with the officer's new grade; or

(ii) the officer's position was eliminated in a reorganization.

(h) CONSTRUCTIVE CREDIT.—(1) The Secretary of Defense may accord constructive credit in the case of an officer (other than a general or flag officer) who, for reasons of military necessity, is reassigned from a joint duty assignment within 60 days of meeting the tour length criteria prescribed in subsection (f)(1), (f)(2), (f)(4), or (g)(2). The amount of constructive service that may be credited to such officer shall be the amount sufficient for the completion of the applicable tour of duty requirement, but in no case more than 60 days.

(2) For the purpose of computing under subsection (e) the average length of joint duty assignments during a fiscal year, the amount of any constructive service credited under this subsection with respect to a joint duty assignment to be counted in that computation shall be excluded.

(3) This subsection shall not apply in the case of an officer who serves less than 10 months in the joint duty assignment.

(i) JOINT DUTY CREDIT FOR CERTAIN JOINT TASK FORCE ASSIGNMENTS.—(1) In the case of an officer who completes service in a qualifying temporary joint task force assignment, the Secretary of Defense, with the advice of the Chairman of the Joint Chiefs of Staff, may (subject to the criteria prescribed under paragraph (4)) grant the officer—

(A) credit for having completed a full tour of duty in a joint duty assignment; or

(B) credit countable for determining cumulative service in joint duty assignments.

(2)(A) For purposes of paragraph (1), a qualifying temporary joint task force assignment of an officer is a temporary assignment, any part of which is performed by the officer on or after February 10, 1996—

(i) to the headquarters staff of a United States joint task force that is part of a unified command or the United States element of the headquarters staff of a multinational force; and

(ii) with respect to which the Secretary of Defense determines that service of the officer in that assignment is equivalent to that which would be gained by the officer in a joint duty assignment.

(B) An officer may not be granted credit under this subsection unless the officer is recommended for such credit by the Chairman of the Joint Chiefs of Staff.

(3) Credit under paragraph (1) (including a determination under paragraph (2)(A)(ii) and a recommendation under paragraph (2)(B) with respect to such credit) may be granted only on a case-by-case basis in the case of an individual officer.

(4) The Secretary of Defense shall prescribe by regulation criteria for determining whether an officer may be granted credit under paragraph (1) with respect to service in a qualifying temporary joint task force assignment. The criteria shall apply uniformly among the armed forces and shall include the following requirements:

(A) For an officer to be credited as having completed a full tour of duty in a joint duty assignment, the length of the officer's service in the qualifying temporary joint task force assignment must meet the requirements of subsection (a) or (c).

(B) For an officer to be credited with service for purposes of determining cumulative service in joint duty assignments, the officer must serve at least 90 consecutive days in the qualifying temporary joint task force assignment.

(C) The service must be performed in support of a mission that is directed by the President or that is assigned by the President to United States forces in the joint task force involved.

(D) The joint task force must be constituted or designated by the Secretary of Defense or by the commander of a combatant command or of another force.

(E) The joint task force must conduct combat or combat-related operations in a unified action under joint or multinational command and control.

(5) Officers for whom joint duty credit is granted pursuant to this subsection may not be taken into account for the purposes of any of the following provisions of this title: section 661(d)(1), section 662(a)(3), section 662(b), subsection (a) of this section, and paragraphs (7), (8), (9), (11), and (12) of section 667.

(6) In the case of an officer credited with having completed a full tour of duty in a joint duty assignment pursuant to this subsection, the Secretary of Defense may waive the requirement in paragraph (1)(B) of section 661(c) of this title that the tour of duty in a joint duty assignment be performed after the officer completes a program of education referred to in paragraph (1)(A) of that section. The provisions of subparagraphs (C) and (D) of section 661(c)(3) of this title shall apply to such a waiver in the same manner as to a waiver under subparagraph (A) of that section.

(Added P.L. 99–433, § 401(a), Oct. 1, 1986, 100 Stat. 1028; amended P.L. 100–180, § 1303(a), Dec. 4, 1987, 101 Stat. 1170; P.L. 100–456, §§ 514, 517(b), Sept. 29, 1988, 102 Stat. 1969, 1971; P.L. 104–106, § 501(b), (e), (f), Feb. 10, 1996, 110 Stat. 290–292; P.L. 106–65, § 1066(a)(5), Oct. 5, 1999, 113 Stat. 770.)

§ 665. Procedures for monitoring careers of joint officers

(a) PROCEDURES.—(1) The Secretary of Defense, with the advice of the Chairman of the Joint Chiefs of Staff, shall establish procedures for overseeing the careers of—

(A) officers with the joint specialty; and

(B) other officers who serve in joint duty assignments.

(2) Such oversight shall include monitoring of the implementation of the career guidelines established under section 661(e) of this title.

(b) FUNCTION OF JOINT STAFF.—The Secretary shall take such action as necessary to enhance the capabilities of the Joint Staff so that it can—

(1) monitor the promotions and career assignments of officers with the joint specialty and of other officers who have served in joint duty assignments; and

(2) otherwise advise the Chairman on joint personnel matters.

(Added P.L. 99–433, § 401(a), Oct. 1, 1986, 100 Stat. 1028.)

§ 666. Reserve officers not on the active-duty list

The Secretary of Defense shall establish personnel policies emphasizing education and experience in joint matters for reserve officers not on the active-duty list. Such policies shall, to the extent practicable for the reserve components, be similar to the policies provided by this chapter.

(Added P.L. 99–433, § 401(a), Oct. 1, 1986, 100 Stat. 1028.)

§ 667. Annual report to Congress

The Secretary of Defense shall include in the annual report of the Secretary to Congress under section 113(c) of this title, for the period covered by the report, the following information (which shall be shown for the Department of Defense as a whole and separately for the Army, Navy, Air Force, and Marine Corps):

(1) The number of officers selected for the joint specialty and their education and experience.

(2) The military occupational specialties within each of the armed forces that have been designated as critical occupational specialties under section 661(c)(2) of this title, separately identifying those specialties for which there is a severe shortage of trained officers, together with an explanation of how those specialties meet the criteria for that designation in section 661(c)(2)(B) of this title.

(3) The number of officers on the active-duty list with a military occupational specialty designated under section 661(c)(2) of this title as a critical occupational specialty who—

(A) have been nominated for the joint specialty;

(B) have been nominated for the joint specialty and are serving in a joint duty assignment;

(C) have completed a joint duty assignment and are attending an appropriate program at a joint professional military education school;

(D) have completed an appropriate program at a joint professional military education school;

(E) have been selected for the joint specialty; and

(F) have served, or are serving in, a second joint duty assignment after being selected for the joint specialty, with the number of such officers who have served, or are serving, in a critical joint duty assignment shown separately for general and flag officers, and for all other officers.

(4) For each fiscal year—

(A) the number of officers nominated for the joint specialty and, of those, the number who have a military occupational specialty designated as a critical occupational specialty; and

(B) a comparison of the number of officers who have the joint specialty who qualified for the joint specialty

under section 661(c)(1) of this title with the number of officers who have the joint specialty who were selected for the joint specialty under section 661(c)(2) of this title.

(5) The promotion rate for officers considered for promotion from within the promotion zone who are serving on the Joint Staff compared with the promotion rate for other officers considered for promotion from within the promotion zone in the same pay grade and the same competitive category, shown for all officers of the armed force and for officers serving on the headquarters staff of the armed force concerned.

(6) The promotion rate for officers with the joint specialty, compared in the same manner as specified in paragraph (5).

(7) The promotion rate for other officers who are serving in joint duty assignments, compared in the same manner as specified in paragraph (5).

(8) The promotion rate for officers considered for promotion from below the promotion zone, shown for officers serving on the Joint Staff, officers with the joint specialty, and other officers serving in joint duty assignments, compared in the same manner as specified in paragraph (5).

(9) The promotion rate for officers considered for promotion from above the promotion zone, shown for officers serving on the Joint Staff, officers with the joint specialty, and other officers serving in joint duty assignments, compared in the same manner as specified in paragraph (5).

(10) An analysis of assignments of officers after selection for the joint specialty.

(11) The average length of tours of duty in joint duty assignments—

(A) for general and flag officers, shown separately for assignments to the Joint Staff and other joint duty assignments; and

(B) for other officers, shown separately for assignments to the Joint Staff and other joint duty assignments.

(12) The number of times, in the case of each category of exclusion, that service in a joint duty assignment was excluded in computing the average length of joint duty assignments.

(13) In any case in which the information under paragraphs (5) through (9) shows a significant imbalance between officers serving in joint duty assignments or having the joint specialty and other officers, a description of what action has been taken (or is planned to be taken) by the Secretary to correct the imbalance.

(14) An analysis of the extent to which the Secretary of each military department is providing officers to fill that department's share (as determined by law or by the Secretary of Defense) of Joint Staff and other joint duty assignments, including the reason for any significant failure by a military department to fill its share of such positions and a discussion of the actions being taken to correct the shortfall.

(15) The number of times a waiver authority was exercised under this chapter (or under any other provision of law which permits the waiver of any requirement relating to joint duty assignments) and in the case of each such authority—

(A) whether the authority was exercised for a general or flag officer;

(B) an analysis of the reasons for exercising the authority; and

(C) the number of times in which action was taken without exercise of the waiver authority compared with the number of times waiver authority was exercised (in the case of each waiver authority under this chapter or under any other provision of law which permits the waiver of any requirement relating to joint duty assignments).

(16) The number of officers granted credit for service in joint duty assignments under section 664(i) of this title and—

(A) of those officers—

(i) the number of officers credited with having completed a tour of duty in a joint duty assignment; and

(ii) the number of officers granted credit for purposes of determining cumulative service in joint duty assignments; and

(B) the identity of each operation for which an officer has been granted credit pursuant to section 664(i) of this title and a brief description of the mission of the operation.

(17) With regard to each time the principal course of instruction at the Armed Forces Staff College [3] is offered—

(A) the number of officers selected to attend that course who did not first complete while in residence at a professional military education school operated by a military department the principal course of instruction offered at that school;

(B) the number of those officers as a percentage of all officers who attended that course of instruction at the Armed Forces Staff College [3];

(C) a description of the different reasons why officers were selected to attend that course without first attending the principal course of instruction offered at a professional military education school operated by a military department; and

(D) the number of officers so selected for each such reason.

(18) Such other information and comparative data as the Secretary of Defense considers appropriate to demonstrate the performance of the Department of Defense and the performance of each military department in carrying out this chapter.

(Added P.L. 99–433, § 401(a), Oct. 1, 1986, 100 Stat. 1029; amended P.L. 100–180, § 1304, Dec. 4, 1987, 101 Stat. 1172; P.L. 100–456, § 512(b), Sept. 29, 1988, 102 Stat. 1968; P.L. 101–189, § 1123(d), Nov. 29, 1989, 103 Stat. 1557; P.L. 104–106, § 501(c), Feb. 10, 1996, 110 Stat. 292.)

§ 668. Definitions

(a) JOINT MATTERS.—In this chapter, the term "joint matters" means matters relating to the integrated employment of land, sea, and air forces, including matters relating to—

(1) national military strategy;

[3] See footnote 2 under section 663(e).

(2) strategic planning and contingency planning; and

(3) command and control of combat operations under unified command.

(b) JOINT DUTY ASSIGNMENT.—(1) The Secretary of Defense shall by regulation define the term "joint duty assignment" for the purposes of this chapter. That definition shall be limited to assignments in which the officer gains significant experience in joint matters and shall exclude—

(A) assignments for joint training or joint education; and

(B) assignments within an officer's own military department.

(2) The Secretary shall publish a list showing—

(A) the positions that are joint duty assignment positions under such regulation and the number of such positions and, of those positions, those that are positions held by general or flag officers and the number of such positions; and

(B) of the positions listed under subparagraph (A), those that are critical joint duty assignment positions and the number of such positions and, of those positions, those that are positions held by general or flag officers and the number of such positions.

(c) CLARIFICATION OF "TOUR OF DUTY".—For purposes of this chapter, a tour of duty in which an officer served in more than one joint duty assignment within the same organization without a break between such assignments shall be considered to be a single tour of duty in a joint duty assignment.

(Added P.L. 99–433, § 401(a), Oct. 1, 1986, 100 Stat. 1029; amended P.L. 100–180, §§ 1302(c)(1), 1303(b), Dec. 4, 1987, 101 Stat. 1170, 1172; P.L. 100–456, § 519(b), Sept. 29, 1988, 102 Stat. 1972.)

CHAPTER 39—ACTIVE DUTY

Sec.
671. Members not to be assigned outside United States before completing training.
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§ 671. Members not to be assigned outside United States before completing training

(a) A member of the armed forces may not be assigned to active duty on land outside the United States and its territories and possessions until the member has completed the basic training requirements of the armed force of which he is a member.

(b) In time of war or a national emergency declared by Congress or the President, the period of required basic training (or its equivalent) may not (except as provided in subsection (c)) be less than 12 weeks.

(c)(1) A period of basic training (or equivalent training) shorter than 12 weeks may be established by the Secretary concerned for members of the armed forces who have been credentialed in a medical profession or occupation and are serving in a health-care occupational specialty, as determined under regulations prescribed under paragraph (2). Any such period shall be established under regulations prescribed under paragraph (2) and may be established notwithstanding section 4(a) of the Military Selective Service Act (50 U.S.C. App. 454(a)).

(2) The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations for the purposes of paragraph (1). The regulations prescribed by the Secretary of Defense shall apply uniformly to the military departments.

(Aug. 10, 1956, ch. 1041, 70A Stat. 27; Oct. 7, 1975, P.L. 94–106, § 802(b), 89 Stat. 537; text revised in entirety P.L. 99–661, § 501, Nov. 14, 1986, 100 Stat. 3863; amended P.L. 103–160, § 511, Nov. 30, 1993, 107 Stat. 1648.)

§ 671a. Members: service extension during war

Unless terminated at an earlier date by the Secretary concerned, the period of active service of any member of an armed force is extended for the duration of any war in which the United States may be engaged and for six months thereafter.

(Added P.L. 90–235, § 1(a)(1)(A), Jan. 2, 1968, 81 Stat. 753.)

§ 671b. Members: service extension when Congress is not in session

(a) Notwithstanding any other provision of law, when the President determines that the national interest so requires, he may, if Congress is not in session, having adjourned sine die, authorize the Secretary of Defense to extend for not more than six months enlistments, appointments, periods of active duty, periods of active duty for training, periods of obligated service, or other military status, in any component of the armed forces that expire before the thirtieth day after Congress next convenes or reconvenes.

(b) An extension under this section continues until the sixtieth day after Congress next convenes or reconvenes or until the expiration of the period of extension specified by the Secretary of Defense, whichever occurs earlier, unless sooner terminated by law or Executive order.

(Added P.L. 90–235, § 1(a)(1)(A), Jan. 2, 1968, 81 Stat. 753; amended P.L. 101–189, § 653(a)(3), Nov. 29, 1989, 103 Stat. 1462.)

§ 672. Reference to chapter 1209

Provisions of law relating to service of members of reserve components on active duty are set forth in chapter 1209 of this title (beginning with section 12301).

(Added P.L. 103–337, § 1662(e)(4), 108 Stat. 2992.)

[§§ 673, 673a, 673b, 673c, 674 to 687. Transferred to §§ 12302 to 12318]

§ 688. Retired members: authority to order to active duty; duties

(a) AUTHORITY.—Under regulations prescribed by the Secretary of Defense, a member described in subsection (b) may be ordered to active duty by the Secretary of the military department concerned at any time.

(b) COVERED MEMBERS.—Except as provided in subsection (d), subsection (a) applies to the following members of the armed forces:

(1) A retired member of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps.

(2) A member of the Retired Reserve who was retired under section 1293, 3911, 3914, 6323, 8911, or 8914 of this title.

(3) A member of the Fleet Reserve or Fleet Marine Corps Reserve.

(c) DUTIES OF MEMBER ORDERED TO ACTIVE DUTY.—The Secretary concerned may, to the extent consistent with other provisions of law, assign a member ordered to active duty under this section to such duties as the Secretary considers necessary in the interests of national defense.

(d) EXCLUSION OF OFFICERS RETIRED ON SELECTIVE EARLY RETIREMENT BASIS.—The following officers may not be ordered to active duty under this section:

(1) An officer who retired under section 638 of this title.

(2) An officer who—

(A) after having been notified that the officer was to be considered for early retirement under section 638 of this title by a board convened under section 611(b) of this title and before being considered by that board, requested retirement under section 3911, 6323, or 8911 of this title; and

(B) was retired pursuant to that request.

(e) LIMITATION OF PERIOD OF RECALL SERVICE.—(1) A member ordered to active duty under subsection (a) may not serve on active duty pursuant to orders under that subsection for more than 12 months within the 24 months following the first day of the active duty to which ordered under that subsection.

(2) Paragraph (1) does not apply to the following officers:

(A) A chaplain who is assigned to duty as a chaplain for the period of active duty to which ordered.

(B) A health care professional (as characterized by the Secretary concerned) who is assigned to duty as a health care professional for the period of active duty to which ordered.

(C) An officer assigned to duty with the American Battle Monuments Commission for the period of active duty to which ordered.

(f) WAIVER FOR PERIODS OF WAR OR NATIONAL EMERGENCY.—Subsections (d) and (e) do not apply in time of war or of national emergency declared by Congress or the President.

(Added P.L. 96–513, § 106, Dec. 12, 1980, 94 Stat. 2868; amended P.L. 98–94, § 1017(b), Sept. 24, 1983, 97 Stat. 669; P.L. 99–145, § 516, Nov. 8, 1985, 99 Stat. 630; P.L. 102–190, § 506(a), Dec. 5, 1991, 105 Stat. 1359; P.L. 103–160, § 563, Nov. 30, 1993, 107 Stat. 1669; P.L. 104–201, § 521(a), Sept. 23, 1996, 110 Stat. 2515; P.L. 105–85, § 502, Nov. 18, 1997, 111 Stat. 1724.)

§ 689. Retired members: grade in which ordered to active duty and upon release from active duty

(a) GENERAL RULE FOR GRADE IN WHICH ORDERED TO ACTIVE DUTY.—Except as provided in subsections (b) and (c), a retired member ordered to active duty under section 688 of this title shall be ordered to active duty in the member's retired grade.

(b) MEMBERS RETIRED IN O–9 AND O–10 GRADES.—A retired member ordered to active duty under section 688 of this title whose retired grade is above the grade of major general or rear admiral shall be ordered to active duty in the highest permanent grade held by such member while serving on active duty.

(c) MEMBERS WHO PREVIOUSLY SERVED IN GRADE HIGHER THAN RETIRED GRADE.—(1) A retired member ordered to active duty under section 688 of this title who has previously served on active duty satisfactorily, as determined by the Secretary of the military department concerned, in a grade higher than that member's retired grade may be ordered to active duty in the highest grade in which the member had so served satisfactorily, except that such a member may not be so ordered to active duty in a grade above major general or rear admiral.

(2) A retired member ordered to active duty in a grade that is higher than the member's retired grade pursuant to subsection (a) shall be treated for purposes of section 690 of this title as if the member was promoted to that higher grade while on that tour of active duty.

(3) If, upon being released from that tour of active duty, such a retired member has served on active duty satisfactorily, as determined by the Secretary concerned, for not less than a total of 36 months in a grade that is a higher grade than the member's retired grade, the member is entitled to placement on the retired list in that grade.

(d) GRADE UPON RELEASE FROM ACTIVE DUTY.—A member ordered to active duty under section 688 of this title who, while on active duty, is promoted to a grade that is higher than that member's retired grade is entitled, upon that member's release from that tour of active duty, to placement on the retired list in the highest grade in which the member served on active duty satisfactorily, as determined by the Secretary of the military department concerned, for not less than six months.

(Added P.L. 104–201, § 521(a), Sept. 23, 1996, 110 Stat. 2515 [prior § 689 trans. to § 12320].)

§ 690. Retired members ordered to active duty: limitation on number

(a) GENERAL AND FLAG OFFICERS.—Not more than 15 retired general officers of the Army, Air Force, or Marine Corps, and not more than 15 retired flag officers of the Navy, may be on active duty at any one time. For the purposes of this subsection a retired officer ordered to active duty for a period of 60 days or less is not counted.

(b) LIMITATION BY SERVICE.—(1) Not more than 25 officers of any one armed force may be serving on active duty concurrently pursuant to orders to active duty issued under section 688 of this title.

(2) In the administration of paragraph (1), the following officers shall not be counted:

(A) A chaplain who is assigned to duty as a chaplain for the period of active duty to which ordered.

(B) A health care professional (as characterized by the Secretary concerned) who is assigned to duty as a health care professional for the period of the active duty to which ordered.

(C) Any officer assigned to duty with the American Battle Monuments Commission for the period of active duty to which ordered.

(D) Any member of the Retiree Council of the Army, Navy, or Air Force for the period on active duty to attend the annual meeting of the Retiree Council.

(c) WAIVER FOR PERIODS OF WAR OR NATIONAL EMERGENCY.—Subsection (a) does not apply in time of war or of national emergency declared by Congress or the President after November 30, 1980. Subsection (b) does not apply in time of war or of national emergency declared by Congress or the President.

(Added P.L. 104–201, § 521(a), Sept. 23, 1996, 110 Stat. 2515 [prior § 690 trans. to § 12318]; amended P.L. 106–65, § 507, Oct. 5, 1999, 113 Stat. 591.)

§ 691. Permanent end strength levels to support two major regional contingencies

(a) The end strengths specified in subsection (b) are the minimum strengths necessary to enable the armed forces to fulfill a national defense strategy calling for the United States to be able to successfully conduct two nearly simultaneous major regional contingencies.

(b) Unless otherwise provided by law, the number of members of the armed forces (other than the Coast Guard) on active duty at the end of any fiscal year shall be not less than the following:

(1) For the Army, 480,000.
(2) For the Navy, 372,000.
(3) For the Marine Corps, 172,600.
(4) For the Air Force, 357,000.

(c) The budget for the Department of Defense for any fiscal year as submitted to Congress shall include amounts for funding for each of the armed forces (other than the Coast Guard) at least in the amounts necessary to maintain the active duty end strengths prescribed in subsection (b), as in effect at the time that such budget is submitted.

(d) No funds appropriated to the Department of Defense may be used to implement a reduction of the active duty end strength for any of the armed forces (other than the Coast Guard) for any fiscal year below the level specified in subsection (b) unless the reduction in end strength for that armed force for that fiscal year is specifically authorized by law.

(e) For a fiscal year for which the active duty end strength authorized by law pursuant to section 115(a)(1)(A) of this title for any of the armed forces is identical to or greater than the number applicable to that armed force under subsection (b), the Secretary of Defense may reduce that number by not more than 0.5 percent.

(f) The number of members of the armed forces on active duty shall be counted for purposes of this section in the same manner as applies under section 115(a)(1) of this title.

(Added P.L. 104–106, § 401(b)(1), Feb. 10, 1996, 110 Stat. 285; amended P.L. 104–201, § 402(a), (b), Sept. 23, 1996, 110 Stat. 2504; P.L. 105–85, § 402, Nov. 18, 1997, 111 Stat. 1719; P.L. 105–261, § 402(a),(b), Oct. 17, 1998, 112 Stat. 1995, 1996; P.L. 106–65, § 402(a), Oct. 5, 1999, 113 Stat. 585; P.L. 106–398, § 1[402(a), 403], Oct. 30, 2000, 114 Stat. 1654, 1654A–92.)

CHAPTER 40—LEAVE

Sec.
701. Entitlement and accumulation.
702. Cadets and midshipmen.
703. Reenlistment leave.
704. Use of leave; regulations.
705. Rest and recuperative absence for qualified enlisted members extending duty at designated locations overseas.
706. Administration of leave required to be taken pending review of certain court-martial convictions.
707. Payment upon disapproval of certain court-martial sentences for excess leave required to be taken.
708. Educational leave of absence.

§ 701. Entitlement and accumulation

(a) A member of an armed force is entitled to leave at the rate of 2½ calendar days for each month of active service, excluding periods of—

(1) absence from duty without leave;

(2) absence over leave;

(3) confinement as the result of a sentence of a court-martial; and

(4) leave required to be taken under section 876a of this title.

Full-time training, or other full-time duty for a period of more than 29 days, performed under section 316, 502, 503, 504, or 505 of title 32 by a member of the Army National Guard of the United States or the Air National Guard of the United States in his status as a member of the National Guard, and for which he is entitled to pay, is active service for the purposes of this section.

(b) Except as provided in subsection (f) and subsection (g), a member may not accumulate more than 60 days' leave. However, leave taken during a fiscal year may be charged to leave accumulated during that fiscal year without regard to this limitation.

(c) A member who retired after August 9, 1946, who is continued on, or is recalled to active duty, may have his leave which accumulated during his service before retirement carried over to his period of service after retirement.

[(d) Repealed. P.L. 89–151, § 3, Aug. 28, 1965, 79 Stat. 586.]

(e) Leave taken before discharge is considered to be active service.

(f)(1) Under uniform regulations to be prescribed by the Secretary concerned, and approved by the Secretary of Defense, a member who serves on active duty for a continuous period of at least 120 days in an area in which he is entitled to special pay under section 310(a) of title 37 or a member assigned to a deployable ship, mobile unit, or to other duty designated for the purpose of this section, may accumulate 90 days' leave. Except as provided in paragraph (2), leave in excess of 60 days accumulated

under this subsection is lost unless it is used by the member before the end of the third fiscal year after the fiscal year in which the service terminated.

(2) Under the uniform regulations referred to in paragraph (1), a member of an armed force who serves on active duty in a duty assignment in support of a contingency operation during a fiscal year and who, except for this paragraph—

(A) would lose any accumulated leave in excess of 60 days at the end of that fiscal year, shall be permitted to retain such leave (not to exceed 90 days) until the end of the succeeding fiscal year; or

(B) would lose any accumulated leave in excess of 60 days at the end of the succeeding fiscal year (other than by reason of subparagraph (A)), shall be permitted to retain such leave (not to exceed 90 days) until the end of the next succeeding fiscal year.

(g) A member who is in a missing status, as defined in section 551(2) of title 37, accumulates leave without regard to the 60-day limitation in subsection (b) and the 90-day limitation in subsection (f). Notwithstanding the death of a member while in a missing status, he continues to earn leave through the date—

(1) the Secretary concerned receives evidence that the member is dead; or

(2) that his death is prescribed or determined under section 555 of title 37.

Leave accumulated while in missing status shall be accounted for separately. It may not be taken, but shall be paid for under section 501(h) of title 37. However, a member whose death is prescribed or determined under section 555 or 556 of title 37 may, in addition to leave accrued before entering a missing status, accrue not more than 150 days' leave during the period he is in a missing status, unless his actual death occurs on a date when, had he lived, he would have accrued leave in excess of 150 days, in which event settlement will be made for the number of days accrued to the actual date of death. Leave so accrued in a missing status shall be accounted for separately and paid for under the provisions of section 501 of title 37.

(h) A member who has taken leave in excess of that authorized by this section and who is being discharged or released from active duty for the purpose of accepting an appointment or a warrant in an armed force, or of entering into an enlistment or an extension of an enlistment in an armed force, may elect to have excess leave of up to 30 days or the maximum number of days of leave that could be earned in the new term of service, whichever is less, carried over to that new term of service to count against leave that will accrue on the new term of service. A member shall be required, at the time of his discharge or release from active duty, to pay for excess leave not carried over under this subsection.

(Added P.L. 87–649, § 3(1), Sept. 7, 1962, 76 Stat. 492; amended P.L. 89–151, § 3, Aug. 28, 1965, 79 Stat. 586; P.L. 90–245, § 1, Jan. 2, 1968, 81 Stat. 782; P.L. 92–596, § 1, Oct. 27, 1972, 86 Stat. 1317; P.L. 96–579, § 10, Dec. 23, 1980, 94 Stat. 3368; P.L. 97–81, § 2(a), Nov. 20, 1981, 95 Stat. 1085; P.L. 98–94, § 1031(a), Sept. 24, 1983, 97 Stat. 671; P.L. 98–525, § 1405(18), Oct. 19, 1984, 98 Stat. 2622; P.L. 99–661, § 506(a), Nov. 14, 1986, 100 Stat. 3864; P.L. 102–190, § 638, Dec. 5, 1991, 105 Stat. 1384.)

§ 702. Cadets and midshipmen

(a) GRADUATION LEAVE.—Graduates of the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, or the Coast Guard Academy who, upon graduation, are appointed in a component of an armed force, may, in the discretion of the Secretary concerned or his designated representative, be granted graduation leave of not more than 60 days. Leave granted under this subsection is in addition to any other leave and may not be deducted from or charged against other leave authorized by this chapter, and must be completed within three months of the date of graduation. Leave under this subsection may not be carried forward as credit beyond the date of reporting to the first permanent duty station or to a port of embarkation for permanent duty outside the United States or in Alaska or Hawaii.

(b) INVOLUNTARY LEAVE WITHOUT PAY FOR SUSPENDED ACADEMY CADETS AND MIDSHIPMEN.—(1) Under regulations prescribed under subsection (d), the Secretary concerned may place an academy cadet or midshipman on involuntary leave for any period during which the Superintendent of the Academy at which the cadet or midshipman is admitted has suspended the cadet or midshipman from duty at the Academy—

(A) pending separation from the Academy;

(B) pending return to the Academy to repeat an academic semester or year; or

(C) for other good cause.

(2) A cadet or midshipman placed on involuntary leave under paragraph (1) is not entitled to any pay under section 203(c) of title 37 for the period of the leave.

(3) Return of an academy cadet or midshipman to a pay status at the Academy concerned from involuntary leave status under paragraph (1) does not restore any entitlement of the cadet or midshipman to pay for the period of the involuntary leave.

(c) INAPPLICABLE LEAVE PROVISIONS.—Sections 701, 703, and 704 of this title and subsection (a) do not apply to academy cadets or midshipmen or cadets or midshipmen serving elsewhere in the armed forces.

(d) REGULATIONS.—The Secretary concerned, or his designated representative, may prescribe regulations relating to leave for cadets and midshipmen.

(e) DEFINITION.—In this section, the term "academy cadet or midshipman" means—

(1) a cadet of the United States Military Academy;

(2) a midshipman of the United States Naval Academy;

(3) a cadet of the United States Air Force Academy; or

(4) a cadet of the United States Coast Guard Academy.

(Added P.L. 87–649, § 3(1), Sept. 7, 1962, 76 Stat. 492; amended P.L. 96–513, § 511(20), Dec. 12, 1980, 94 Stat. 2921; P.L. 103–160, § 532, Nov. 30, 1993, 107 Stat. 1657; P.L. 105–261, § 562, Oct. 17, 1998, 112 Stat. 2027; P.L. 106–398, § 1[1087(a)(3)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290.)

§ 703. Reenlistment leave

(a) Leave for not more than 90 days may be authorized, in the discretion of the Secretary concerned, or his designated representative, to a member of an armed force who reenlists. Leave author-

ized under this section shall be deducted from leave accrued during active service before reenlistment or charged against leave that may accrue during future active service, or both.

(b) Under regulations prescribed by the Secretary of Defense, and notwithstanding subsection (a), a member who is on active duty in an area described in section 310(a)(2) of title 37 and who, by reenlistment, extension of enlistment, or other voluntary action, extends his required tour of duty in that area for at least six months may be—

(1) authorized not more than thirty days of leave, exclusive of travel time, at an authorized place selected by the member; and

(2) transported at the expense of the United States to and from that place.

Leave under this subsection may not be charged or credited to leave that accrued or that may accrue under section 701 of this title. The provisions of this subsection shall be effective only in the case of members who extend their required tours of duty on or before June 30, 1973.

(Added P.L. 87–649, § 3(1), Sept. 7, 1962, 76 Stat. 493; amended P.L. 89–735, Nov. 2, 1966, 80 Stat. 1163; P.L. 90–330, June 5, 1968, 82 Stat. 170; P.L. 91–302, July 2, 1970, 84 Stat. 368; P.L. 92–481, Oct. 9, 1972, 86 Stat. 795.)

§ 704. Use of leave; regulations [1]

(a) Under regulations prescribed by the Secretary concerned, or his designated representative, leave may be taken by a member on a calendar-day basis as vacation or absence from duty with pay, annually as accruing, or otherwise.

(b) Regulations prescribed under subsection (a) shall—

(1) provide equal treatment of officers and enlisted members;

(2) establish to the fullest extent practicable uniform policies for the several armed forces;

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[1] Section 363(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193; 110 Stat. 2525), provides:

(b) FACILITATING GRANTING OF LEAVE FOR ATTENDANCE AT HEARINGS.—

(1) REGULATIONS.—The Secretary of each military department, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to facilitate the granting of leave to a member of the Armed Forces under the jurisdiction of that Secretary in a case in which—

(A) the leave is needed for the member to attend a hearing described in paragraph (2);

(B) the member is not serving in or with a unit deployed in a contingency operation (as defined in section 101 of title 10, United States Code); and

(C) the exigencies of military service (as determined by the Secretary concerned) do not otherwise require that such leave not be granted.

(2) COVERED HEARINGS.—Paragraph (1) applies to a hearing that is conducted by a court or pursuant to an administrative process established under State law, in connection with a civil action—

(A) to determine whether a member of the Armed Forces is a natural parent of a child; or

(B) to determine an obligation of a member of the Armed Forces to provide child support.

(3) DEFINITIONS.—For purposes of this subsection—

(A) The term "court" has the meaning given that term in section 1408(a) of title 10, United States Code.

(B) The term "child support" has the meaning given such term in section 459(i) of the Social Security Act (42 U.S.C. 659(i)).

(3) provide that leave shall be taken annually as accruing to the extent consistent with military requirements and other exigencies; and

(4) provide for the determination of the number of calendar days of leave to which a member is entitled, including the number of calendar days of absence from duty or vacation to be counted or charged against leave.

(Added P.L. 87–649, § 3(1), Sept. 7, 1962, 76 Stat. 493.)

§ 705. Rest and recuperative absence for qualified enlisted members extending duty at designated locations overseas

(a) Under regulations prescribed by the Secretary concerned, an enlisted member of an armed force who—

(1) is entitled to basic pay;

(2) has a specialty that is designated by the Secretary concerned for the purposes of this section;

(3) has completed a tour of duty (as defined in accordance with regulations prescribed by the Secretary concerned) at a location outside the 48 contiguous States and the District of Columbia that is designated by the Secretary concerned for the purposes of this section; and

(4) at the end of that tour of duty executes an agreement to extend that tour for a period of not less than one year;

may, in lieu of receiving special pay under section 314 of title 37 for duty performed during such extension of duty, elect to receive one of the benefits specified in subsection (b). Receipt of any such benefit is in addition to any other leave or transportation to which the member may be entitled.

(b) The benefits authorized by subsection (a) are—

(1) a period of rest and recuperative absence for not more than 30 days; or

(2) a period of rest and recuperative absence for not more than 15 days and round-trip transportation at Government expense from the location of the extended tour of duty to the nearest port in the 48 contiguous States and return.

(c) The provisions of this section shall not be effective unless the Secretary concerned determines that the application of this section will not adversely affect combat or unit readiness.

(Added P.L. 96–579, § 5(b)(1), Dec. 23, 1980, 94 Stat. 3367.)

§ 706. Administration of leave required to be taken pending review of certain court-martial convictions

(a) A period of leave required to be taken under section 876a of this title shall be charged against any accrued leave to the member's credit on the day before the day such leave begins unless the member elects to be paid for such accrued leave under subsection (b). If the member does not elect to be paid for such accrued leave under subsection (b), or does not have sufficient accrued leave to his credit to cover the total period of leave required to be taken, the leave not covered by accrued leave shall be charged as excess leave. If the member elects to be paid for accrued leave under sub-

section (b), the total period of leave required to be taken shall be charged as excess leave.

(b)(1) A member who is required to take leave under section 876a of this title and who has accrued leave to his credit on the day before the day such leave begins may elect to be paid for such accrued leave. Any such payment shall be based on the rate of basic pay to which the member was entitled on the day before the day such leave began. If the member does not elect to be paid for such accrued leave, the member is entitled to pay and allowances during the period of accrued leave required to be taken.

(2) Except as provided in paragraph (1) and in section 707 of this title, a member may not accrue or receive pay or allowances during a period of leave required to be taken under section 876a of this title.

(c) A member required to take leave under section 876a of this title is not entitled to any right or benefit under chapter 43 of title 38 solely because of employment during the period of such leave.

(Added P.L. 97–81, § 2(b)(1), Nov. 20, 1981, 95 Stat. 1085; P.L. 102–568, § 506(c)(5), Oct. 29, 1992, 106 Stat. 4341; P.L. 103–337, § 1070(e)(1), Oct. 5, 1994, 108 Stat. 2859; P.L. 104–106, § 1503(a)(7), Feb. 10, 1996, 110 Stat. 511; P.L. 106–398, § 1[1087(a)(4)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290.)

§ 707. Payment upon disapproval of certain court-martial sentences for excess leave required to be taken

(a) A member—

(1) who is required to take leave under section 876a of this title, any period of which is charged as excess leave under section 706(a) of this title; and

(2) whose sentence by court-martial to a dismissal or a dishonorable or bad-conduct discharge is set aside or disapproved by a Court of Criminal Appeals under section 866 of this title or by the United States Court of Appeals for the Armed Forces under section 867 of this title,

shall be paid, as provided in subsection (b), for the period of leave charged as excess leave, unless a rehearing or new trial is ordered and a dismissal or a dishonorable or bad-conduct discharge is included in the result of the rehearing or new trial and such dismissal or discharge is later executed.

(b)(1) A member entitled to be paid under this section shall be deemed, for purposes of this section, to have accrued pay and allowances for each day of leave required to be taken under section 876a of this title that is charged as excess leave (except any day of accrued leave for which the member has been paid under section 706(b)(1) of this title and which has been charged as excess leave). If the pay grade of the member was reduced to a lower grade as a result of the court-martial sentence (including any reduction in pay grade under section 858a of this title) and such reduction has not been set aside, disapproved, or otherwise vacated, pay and allowances to be paid under this section shall be deemed to have accrued in such lower grade. Otherwise, such pay and allowances shall be deemed to have accrued in the pay grade held by the member on the day before the day on which his court-martial sentence was approved by the convening authority.

(2) Such a member shall be paid the amount of pay and allowances that he is deemed to have accrued, reduced by the total

amount of his income from wages, salaries, tips, other personal service income, unemployment compensation, and public assistance benefits from any Government agency during the period he is deemed to have accrued pay and allowances. Except as provided in paragraph (3), such payment shall be made as follows:

(A) Payment shall be made within 60 days from the date of the order setting aside or disapproving the sentence by court-martial to a dismissal or a dishonorable or bad-conduct discharge if no rehearing or new trial has been ordered.

(B) Payment shall be made within 180 days from the date of the order setting aside or disapproving the sentence by court-martial to a dismissal or a dishonorable or bad-conduct discharge if a rehearing or new trial has been ordered but charges have not been referred to a rehearing or new trial within 120 days from the date of that order.

(C) If a rehearing or new trial has been ordered and a dismissal or a dishonorable or bad-conduct discharge is not included in the result of such rehearing or new trial, payment shall be made within 60 days of the date of the announcement of the result of such rehearing or new trial.

(D) If a rehearing or new trial has been ordered and a dismissal or a dishonorable or bad-conduct discharge is included in the result of such rehearing or new trial, but such dismissal or discharge is not later executed, payment shall be made within 60 days of the date of the order which set aside, disapproved, or otherwise vacated such dismissal or discharge.

(3) If a member is entitled to be paid under this section but fails to provide sufficient information in a timely manner regarding his income when such information is requested under regulations prescribed under subsection (c), the periods of time prescribed in paragraph (2) shall be extended until 30 days after the date on which the member provides the information requested.

(c) This section shall be administered under uniform regulations prescribed by the Secretaries concerned. Such regulations may provide for the method of determining a member's income during any period the member is deemed to have accrued pay and allowances, including a requirement that the member provide income tax returns and other documentation to verify the amount of his income.

(Added P.L. 97–81, § 2(b)(1), Nov. 20, 1981, 95 Stat. 1086; amended P.L. 103–337, § 924(c)(1), (2), Oct. 5, 1994, 108 Stat. 2831.)

§ 708. Educational leave of absence

(a) Under such regulations as the Secretary of Defense may prescribe after consultation with the Secretary of Transportation and subject to subsection (b), the Secretary concerned may grant to any eligible member (as defined in subsection (e)) a leave of absence for a period of not to exceed two years for the purposes of permitting the member to pursue a program of education.

(b)(1) A member may not be granted a leave of absence under this section unless—

(A) in the case of an enlisted member, the member agrees in writing to extend his current enlistment after completion (or other termination) of the program of education for which the

leave of absence was granted for a period of two months for each month of the period of the leave of absence; and

(B) in the case of an officer, the member agrees to serve on active duty after completion (or other termination) of the program of education for which the leave of absence was granted for a period (in addition to any other period of obligated service on active duty) of two months for each month of the period of the leave of absence.

(2) A member may not be granted a leave of absence under this section until he has completed any extension of enlistment or reenlistment, or any period of obligated service, incurred by reason of any previous leave of absence granted under this section.

(c)(1) While on a leave of absence under this section, a member shall be paid basic pay but may not receive basic allowance for housing under section 403 of title 37, basic allowance for subsistence under section 402 of such title, or any other pay and allowances to which he would otherwise be entitled for such period.

(2) A period during which a member is on a leave of absence under this section shall be counted for the purposes of computing the amount of the member's basic pay, for the purpose of determining the member's eligibility for retired pay, and for the purpose of determining the member's time in grade for promotion purposes, but may not be counted for the purposes of completion of the term of enlistment of the member (in the case of an enlisted member) or for purposes of section 3021 of title 38, relating to entitlement to supplemental educational assistance.

(d)(1) In time of war, or of national emergency declared by the President or the Congress after October 19, 1984, the Secretary concerned may cancel any leave of absence granted under this section.

(2) The Secretary concerned may cancel a leave of absence granted to a member under this section if the Secretary determines that the member is not satisfactorily pursuing the program of education for which the leave was granted.

(e) In this section, the term "eligible member" means a member of the armed forces on active duty who is eligible for basic educational assistance under chapter 30 of title 38 and who—

(1) in the case of an enlisted member, has completed at least one term of enlistment and has reenlisted; and

(2) in the case of an officer, has completed the officer's initial period of obligated service on active duty.

(Added P.L. 98–525, § 707(a), Oct. 19, 1984, 98 Stat. 2571; amended P.L. 100–26, § 7(i)(2), (k)(3), April 21, 1987, 101 Stat. 282, 284; P.L. 103–337, § 1070(e)(2), Oct. 5, 1994, 108 Stat. 2859; P.L. 105–85, § 603(d)(2)(A), Nov. 18, 1997, 111 Stat. 1782.)

CHAPTER 41—SPECIAL APPOINTMENTS, ASSIGNMENTS, DETAILS, AND DUTIES

Sec.
711. Senior members of Military Staff Committee of United Nations: appointment.
711a. American National Red Cross: detail of commissioned officers.
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§ 711. Senior members of Military Staff Committee of United Nations: appointment

The President, by and with the advice and consent of the Senate, may appoint an officer of the Army, an officer of the Navy or the Marine Corps, and an officer of the Air Force, as senior members of the Military Staff Committee of the United Nations. An officer so appointed has the grade of lieutenant general or vice admiral, as the case may be, while serving under that appointment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 32.)

§ 711a. American National Red Cross: detail of commissioned officers

Commissioned officers of the Army, Navy, and Air Force may be detailed for duty with the American National Red Cross, by the Secretary of the military department concerned, as follows:

(1) for duty with the Service to the Armed Forces Division—

(A) one or more officers of the Army Medical Department;

(B) one or more officers of the Medical Department of the Navy; and

(C) one or more officers selected from among medical officers, dental officers, veterinary officers, medical service officers, nurses, and medical specialists of the Air Force; and

(2) to be in charge of the first-aid department—

(A) an officer of the Medical Corps of the Army;

(B) an officer of the Medical Corps of the Navy; or
(C) a medical officer of the Air Force.

(Added P.L. 90–235, § 4(a)(1)(A), Jan. 2, 1968, 81 Stat. 759; amended P.L. 90–329, June 4, 1968, 82 Stat. 170; P.L. 96–513, § 511(21), Dec. 12, 1980, 94 Stat. 2921.)

§ 712. Foreign governments: detail to assist

(a) Upon the application of the country concerned, the President, whenever he considers it in the public interest, may detail members of the Army, Navy, Air Force, and Marine Corps to assist in military matters—

(1) any republic in North America, Central America, or South America;

(2) the Republic of Cuba, Haiti, or Santo Domingo; and

(3) during a war or a declared national emergency, any other country that he considers it advisable to assist in the interest of national defense.

(b) Subject to the prior approval of the Secretary of the military department concerned, a member detailed under this section may accept any office from the country to which he is detailed. He is entitled to credit for all service while so detailed, as if serving with the armed forces of the United States. Arrangements may be made by the President, with countries to which such members are detailed to perform functions under this section, for reimbursement to the United States or other sharing of the cost of performing such functions.

(Aug. 10, 1956, ch. 1041, 70A Stat. 32; June 30, 1958, P.L. 85–477, § 502(k), 72 Stat. 275.)

§ 713. State Department: assignment or detail as couriers and building inspectors

(a) Upon the request of the Secretary of State, the Secretary of a military department may assign or detail members of the armed forces under his jurisdiction for duty—

(1) as inspectors of buildings owned or occupied abroad by the United States;

(2) as inspectors or supervisors of buildings under construction or repair abroad by or for the United States; and

(3) as couriers of the Department of State.

(b) The Secretary concerned may assign or detail a member for duty under subsection (a) with or without reimbursement from the Department of State. However, a member so assigned or detailed may be paid the traveling expenses authorized for officers of the Foreign Service of the United States. These expenses shall be paid from appropriations of the Department of State.

(Aug. 10, 1956, ch. 1041. 70A Stat. 33.)

§ 714. Defense attaché in France: required grade

An officer may not be selected for assignment to the position of defense attaché to the United States embassy in France unless the officer holds (or is on a promotion list for promotion to) the grade of brigadier general or, in the case of the Navy, rear admiral (lower half).

(Added P.L. 105–85, § 597(a), Nov. 18, 1997, 111 Stat. 1766 [Prior § 714 repealed P.L. 86–533, June 29, 1960].)

[§ 715. Repealed. P.L. 103–337, § 1662(g)(2), Oct. 5, 1994, 108 Stat. 2996]

§ 716. Commissioned officers: transfers among the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service

(a) Notwithstanding any other provision of law, the President, within authorized strengths and with the consent of the officer involved, may transfer any commissioned officer of a uniformed service from his uniformed service to, and appoint him in, another uniformed service. The Secretary of Defense, the Secretary of Transportation, the Secretary of Commerce, and the Secretary of Health and Human Services shall jointly establish, by regulations approved by the President, policies and procedures for such transfers and appointments.

(b) An officer transferred under this section may not be assigned precedence or relative rank higher than that which he held on the day before the transfer.

(Added P.L. 85–599, § 11(2), Aug. 6, 1958, 72 Stat. 521; amended P.L. 91–392, § 1, Sept. 1, 1970, 84 Stat. 834; P.L. 96–215, § 2(a), Mar. 25, 1980, 94 Stat. 123; P.L. 97–295, § 1(10), Oct. 12, 1982, 96 Stat. 1289; P.L. 98–94, § 1007(a)(1), Sept. 24, 1983, 97 Stat. 661; P.L. 99–348, § 304(a)(1), July 1, 1986, 100 Stat. 703.)

§ 717. Members of the armed forces: participation in international sports

(a) 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, may permit members of the armed forces under his jurisdiction to train for, attend, and participate in—

(1) Pan-American Games and Olympic Games and qualifying events and preparatory competition for those games; and

(2) any other international competition in amateur sports, if the Secretary of State determines that the interests of the United States will be served by participation in that competition, and qualifying events and preparatory competition for that competition.

(b) Subject to subsections (c) and (d), the Secretary of Defense or the Secretary of Transportation, as the case may be, may spend such funds, and acquire and use such supplies, as he determines to be necessary to provide for—

(1) the training of members of the armed forces for the competitions covered by subsection (a);

(2) their attendance at and participation in those competitions; and

(3) the training of animals of the armed forces for, and their attendance at and participation in, those competitions.

(c)(1) Not more than $3,000,000, to be apportioned among the military departments as the Secretary of Defense prescribes, may be spent during each successive four-year period beginning on October 1, 1980, for the participation of members of the Army, Navy, Air Force, and Marine Corps in the competitions covered by subsection (a).

(2) Not more than $100,000 may be spent during each successive four-year period beginning on October 1, 1980, for the partici-

pation of members of the Coast Guard in the competitions covered by subsection (a).

(d) Appropriations available to the Department of Defense or to the Department of Transportation, as the case may be, may be used to carry out this section.

(Added P.L. 85–861, § 1(17), Sept. 2, 1958, 72 Stat. 1442, § 717, formerly § 716, renumbered P.L. 87–651, § 103(a), Sept. 7, 1962, 76 Stat. 508; amended P.L. 89–348, § 1(12), Nov. 8, 1965, 79 Stat. 1311; P.L. 89–718, § 7, Nov. 2, 1966, 80 Stat. 1117; P.L. 96–513, § 511(22), Dec. 12, 1980, 94 Stat. 2921; P.L. 98–525, § 1534, Oct. 19, 1984, 98 Stat. 2632.)

[§ 718. Repealed. P.L. 99–433, § 110(a)(1), Oct. 1, 1986, 100 Stat. 1001]

§ 719. Department of Commerce: assignment or detail of members of the armed forces to National Oceanic and Atmospheric Administration

Upon the request of the Secretary of Commerce, the Secretary of a military department may assign or detail members of the armed forces under his jurisdiction for duty in the National Oceanic and Atmospheric Administration, Department of Commerce, with reimbursement from the Department of Commerce. Notwithstanding any other provision of law, a member so assigned or detailed may exercise the functions, and assume the title, of any position in that Administration without affecting his status as a member of an armed force, but he is not entitled to the compensation fixed for that position.

(Added P.L. 89–683, § 1(1), Oct. 15, 1966, 80 Stat. 960; amended P.L. 96–513, § 511(23), Dec. 12, 1980, 94 Stat. 2921.)

§ 720. Chief of Staff to President: appointment

The President, by and with the advice and consent of the Senate, may appoint a general officer of the Army, Air Force, or Marine Corps or a flag officer of the Navy as the Chief of Staff to the President and may designate such position as a position of importance and responsibility under section 601 of this title.

(Added P.L. 96–513, § 501(9)(A), Dec. 12, 1980, 94 Stat. 2907.)

§ 721. General and flag officers: limitation on appointments, assignments, details, and duties outside an officer's own service

(a) LIMITATION.—An officer described in subsection (b) may not be appointed, assigned, or detailed for a period in excess of 180 days to a position external to that officer's armed force if, immediately following such appointment, assignment, or detail, the number of officers described in subsection (b) serving in positions external to such officers' armed force would be in excess of 26.5 percent of the total number of the officers described in subsection (b).

(b) COVERED OFFICERS.—The officers covered by subsection (a), and to be counted for the purposes of the limitation in that subsection, are the following:

(1) Any general or flag officer counted for purposes of section 526(a) of this title.

(2) Any general or flag officer serving in a joint duty assignment position designated by the Chairman of the Joint Chiefs of Staff under section 526(b) of this title.

(3) Any colonel or Navy captain counted for purposes of section 777(d)(1) of this title.

(c) EXTERNAL POSITIONS.—For purposes of this section, the following positions shall be considered to be external to an officer's armed force:

(1) Any position (including a position in joint education) that is a joint duty assignment for purposes of chapter 38 of this title.

(2) Any position in the Office of the Secretary of Defense, a Defense Agency, or a Department of Defense Field Activity.

(3) Any position in the Joint Chiefs of Staff, the Joint Staff, or the headquarters of a combatant command (as defined in chapter 6 of this title).

(4) Any position in the National Guard Bureau.

(5) Any position outside the Department of Defense, including any position in the headquarters of the North Atlantic Treaty Organization or any other international military command, any combined or multinational command, or military mission.

(d) TREATMENT OF OFFICERS HOLDING MULTIPLE POSITIONS.—(1) If an officer described in subsection (b) simultaneously holds both a position external to that officer's armed force and another position not external to that officer's armed force, the Secretary of Defense shall determine whether that officer shall be counted for the purposes of this section.

(2) The Secretary of Defense shall submit to Congress an annual report on the number of officers to whom paragraph (1) was applicable during the year covered by the report. The report shall set forth the determination made by the Secretary under that paragraph in each such case.

(e) ASSIGNMENTS, ETC., FOR PERIODS IN EXCESS OF 180 DAYS.—For purposes of this section, the appointment, assignment, or detail of an officer to a position shall be considered to be for a period in excess of 180 days unless the appointment, assignment, or detail specifies that it is made for a period of 180 days or less.

(f) WAIVER DURING PERIOD OF WAR OR NATIONAL EMERGENCY.—The President may suspend the operation of this section during any period of war or of national emergency declared by Congress or the President.

(Added P.L. 105–85, § 501(a), Nov. 18, 1997, 111 Stat. 1723.)

CHAPTER 43—RANK AND COMMAND

Sec.
741. Rank: commissioned officers of the armed forces.
742. Rank: warrant officers.
743. Rank: Chief of Staff of the Army; Chief of Naval Operations; Chief of Staff of the Air Force; Commandant of the Marine Corps.
744. Physician to White House: assignment; grade.
[745. Repealed.]
747. Command: when different commands of Army, Navy, Air Force, Marine Corps, and Coast Guard join.
749. Command: commissioned officers in same grade or corresponding grades on duty at same place.
750. Command: retired officers.

§ 741. Rank: commissioned officers of the armed forces

(a) Among the grades listed below, the grades of general and admiral are equivalent and are senior to other grades and the grades of second lieutenant and ensign are equivalent and are junior to other grades. Intermediate grades rank in the order listed as follows:

Army, Air Force, and Marine Corps	Navy and Coast Guard
General	Admiral.
Lieutenant general	Vice admiral.
Major general	Rear admiral.
Brigadier general	Rear admiral (lower half).
Colonel	Captain.
Lieutenant colonel	Commander.
Major	Lieutenant commander.
Captain	Lieutenant.
First lieutenant	Lieutenant (junior grade).
Second lieutenant	Ensign.

(b) Rank among officers of the same grade or of equivalent grades is determined by comparing dates of rank. An officer whose date of rank is earlier than the date of rank of another officer of the same or equivalent grade is senior to that officer.

(c) Rank among officers of the Army, Navy, Air Force, and Marine Corps of the same grade or of equivalent grades who have the same date of rank is determined by regulations prescribed by the Secretary of Defense which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps.

(d)(1) The date of rank of an officer of the Army, Navy, Air Force, or Marine Corps who holds a grade as the result of an original appointment shall be determined by the Secretary of the military department concerned at the time of such appointment. The date of rank of an officer of the Army, Navy, Air Force, or Marine Corps who holds a grade as the result of an original appointment and who at the time of such appointment was awarded service credit for prior commissioned service or constructive credit for ad-

vanced education or training, or special experience shall be determined so as to reflect such prior commissioned service or constructive service. Determinations by the Secretary concerned under this paragraph shall be made under regulations prescribed by the Secretary of Defense which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps.

(2) Except as otherwise provided by law, the date of rank of an officer who holds a grade as the result of a promotion is the date of his appointment to that grade.

(3) Under regulations prescribed by the Secretary of Defense, which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps, the date of rank of a reserve commissioned officer (other than a warrant officer) of the Army, Navy, Air Force, or Marine Corps who is to be placed on the active-duty list and who has not been on continuous active duty since his original appointment as a reserve commissioned officer in a grade above chief warrant officer, W–5, or who is transferred from an inactive status to an active status and placed on the active-duty list or the reserve active-status list may, effective on the date on which he is placed on the active-duty list or reserve active-status list, be changed by the Secretary concerned to a later date to reflect such officer's qualifications and experience. The authority to change the date of rank of a reserve officer who is placed on the active-duty list to a later date does not apply in the case of an officer who (A) has served continuously in the Selected Reserve of the Ready Reserve since the officer's last promotion, or (B) is placed on the active-duty list while on a promotion list as described in section 14317(b) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 33; Dec. 12, 1980, P.L. 96–513, § 107, 94 Stat. 2869; July 10, 1981, P.L. 97–22, § 4(h), 95 Stat. 127; Dec. 1, 1981, P.L. 97–86, § 405(b)(8), 95 Stat. 1106; Oct. 12, 1982, P.L. 97–295, § 1(11), 96 Stat. 1289; Oct 30, 1984, P.L. 98–557, § 25(c), 98 Stat. 2873; Nov. 8, 1985, P.L. 99–145, § 514(b)(8), 99 Stat. 629; Dec. 5, 1991, P.L. 102–190, § 1131(1)(A), 105 Stat. 1505; Oct. 5, 1994, P.L. 103–337, § 1626, 108 Stat. 2962.)

§ 742. Rank: warrant officers

(a) Among warrant officer grades, warrant officer grades of a higher numerical designation are senior to warrant officer grades of a lower numerical designation.

(b) Rank among warrant officers of the same grade, and date of rank of warrant officers, is determined in the same manner as prescribed in section 741 of this title for officers in grades above warrant officer grades.

(Added P.L. 102–190, § 1114(a), Dec. 5, 1991, 105 Stat. 1502.)

§ 743. Rank: Chief of Staff of the Army; Chief of Naval Operations; Chief of Staff of the Air Force; Commandant of the Marine Corps

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 rank among themselves according to dates of appointment to those offices, and rank above all other officers on the active-duty list of the Army, Navy, Air Force, and Marine Corps, except the Chairman and the Vice Chairman of the Joint Chiefs of Staff.

(Aug. 10, 1956, ch. 1041, 70A Stat. 34; Dec. 12, 1980, P.L. 96–513, § 501(11), 94 Stat. 2908; Oct. 1, 1986, P.L. 99–433, § 202(b), 100 Stat. 1010.)

§ 744. Physician to White House: assignment; grade

An officer of the Medical Corps of the Army, or a medical officer of the Air Force, who is below the grade of colonel and who is assigned to duty as physician to the White House has the rank, pay, and allowances of colonel while so serving. An officer of the Medical Corps of the Navy who is below the grade of captain and who is assigned to that duty has the rank, pay, and allowances of captain while so serving.

(Aug. 10, 1956, ch. 1041, 70A Stat. 34.)

[§ 745. Repealed. P.L. 102–190, § 1114(b), Dec. 5, 1991, 105 Stat. 1502]

§ 747. Command: when different commands of Army, Navy, Air Force, Marine Corps, and Coast Guard join

When different commands of the Army, Navy, Air Force, Marine Corps, and Coast Guard join or serve together, the officer highest in rank in the Army, Navy, Air Force, Marine Corps, or Coast Guard on duty there, who is otherwise eligible to command, commands all those forces unless otherwise directed by the President.

(Added P.L. 90–235, § 5(a)(1)(A), Jan. 2, 1968, 81 Stat. 760.)

§ 749. Command: commissioned officers in same grade or corresponding grades on duty at same place

(a) When the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, has on duty in the same area, field command, or organization two or more commissioned officers of the same grade who are otherwise eligible to command, the President may assign the command without regard to rank in that grade.

(b) When officers of the Army, Navy, Air Force, Marine Corps, or Coast Guard are on duty in the same area, field, command, or organization and two or more commissioned officers of different services, who are otherwise eligible to command, have the same grade or corresponding grades, the President may assign the command without regard to rank in that grade.

(Added P.L. 90–235, § 5(a)(1)(A), Jan. 2, 1968, 81 Stat. 760.)

§ 750. Command: retired officers

A retired officer has no right to command except when on active duty.

(Added P.L. 96–513, § 108, Dec. 12, 1980, 94 Stat. 2870.)

CHAPTER 45—THE UNIFORM

Sec.
771. Unauthorized wearing prohibited.
771a. Disposition on discharge.
772. When wearing by persons not on active duty authorized.
773. When distinctive insignia required.
774. Religious apparel: wearing while in uniform.
775. Issue of uniform without charge.
776. Applicability of chapter.
777. Wearing of insignia of higher grade before promotion (frocking): authority; restrictions.

§ 771. Unauthorized wearing prohibited

Except as otherwise provided by law, no person except a member of the Army, Navy, Air Force, or Marine Corps, as the case may be, may wear—

(1) the uniform, or a distinctive part of the uniform, of the Army, Navy, Air Force, or Marine Corps; or

(2) a uniform any part of which is similar to a distinctive part of the uniform of the Army, Navy, Air Force, or Marine Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 34.)

§ 771a. Disposition on discharge

(a) Except as provided in subsections (b) and (c), when an enlisted member of an armed force is discharged, the exterior articles of uniform in his possession that were issued to him, other than those that he may wear from the place of discharge to his home under section 772(d) of this title, shall be retained for military use.

(b) When an enlisted member of an armed force is discharged for bad conduct, undesirability, unsuitability, inaptitude, or otherwise than honorably—

(1) the exterior articles of uniform in his possession shall be retained for military use;

(2) under such regulations as the Secretary concerned prescribes, a suit of civilian clothing and an overcoat when necessary, both to cost not more than $30, may be issued to him; and

(3) if he would be otherwise without funds to meet his immediate needs, he may be paid an amount, fixed by the Secretary concerned, of not more than $25.

(c) When an enlisted member of the Army National Guard or the Air National Guard who has been called into Federal service is released from that service, the exterior articles of uniform in his possession shall be accounted for as property issued to the Army

National Guard or the Air National Guard, as the case may be, of the State or territory, Puerto Rico, or the District of Columbia of whose Army National Guard or Air National Guard he is a member, as prescribed in section 708 of title 32.

(Added P.L. 90–235, § 8(1)(A), Jan. 2, 1968, 81 Stat. 763; amended P.L. 100–456, § 1234(a), Sept. 29, 1988, 102 Stat. 2059; P.L. 101–189, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602.)

§ 772. When wearing by persons not on active duty authorized

(a) A member of the Army National Guard or the Air National Guard may wear the uniform prescribed for the Army National Guard or the Air National Guard, as the case may be.

(b) A member of the Naval Militia may wear the uniform prescribed for the Naval Militia.

(c) A retired officer of the Army, Navy, Air Force, or Marine Corps may bear the title and wear the uniform of his retired grade.

(d) A person who is discharged honorably or under honorable conditions from the Army, Navy, Air Force, or Marine Corps may wear his uniform while going from the place of discharge to his home, within three months after his discharge.

(e) A person not on active duty who served honorably in time of war in the Army, Navy, Air Force, or Marine Corps may bear the title, and, when authorized by regulations prescribed by the President, wear the uniform, of the highest grade held by him during that war.

(f) While portraying a member of the Army, Navy, Air Force, or Marine Corps, an actor in a theatrical or motion-picture production may wear the uniform of that armed force if the portrayal does not tend to discredit that armed force.

(g) An officer or resident of a veterans' home administered by the Department of Veterans Affairs may wear such uniform as the Secretary of the military department concerned may prescribe.

(h) While attending a course of military instruction conducted by the Army, Navy, Air Force, or Marine Corps, a civilian may wear the uniform prescribed by that armed force if the wear of such uniform is specifically authorized under regulations prescribed by the Secretary of the military department concerned.

(i) Under such regulations as the Secretary of the Air Force may prescribe, a citizen of a foreign country who graduates from an Air Force school may wear the appropriate aviation badges of the Air Force.

(j) A person in any of the following categories may wear the uniform prescribed for that category:

(1) Members of the Boy Scouts of America.

(2) Members of any other organization designated by the Secretary of a military department.

(Aug. 10, 1956, ch. 1041, 70A Stat. 35; Nov. 8, 1985, P.L. 99–145, § 1301(a)(1), 99 Stat. 735; P.L. 104–201, § 551(b), Sept. 23, 1996, 110 Stat. 2525.)

§ 773. When distinctive insignia required

(a) A person for whom one of the following uniforms is prescribed may wear it, if it includes distinctive insignia prescribed by the Secretary of the military department concerned to distinguish

it from the uniform of the Army, Navy, Air Force, or Marine Corps, as the case may be:

(1) The uniform prescribed by the university, college, or school for an instructor or member of the organized cadet corps of—

(A) a State university or college, or a public high school, having a regular course of military instruction; or

(B) an educational institution having a regular course of military instruction, and having a member of the Army, Navy, Air Force, or Marine Corps as instructor in military science and tactics.

(2) The uniform prescribed by a military society composed of persons discharged honorably or under honorable conditions from the Army, Navy, Air Force, or Marine Corps to be worn by a member of that society when authorized by regulations prescribed by the President.

(b) A uniform prescribed under subsection (a) may not include insignia of grade the same as, or similar to, those prescribed for officers of the Army, Navy, Air Force, or Marine Corps.

(c) Under such regulations as the Secretary of the military department concerned may prescribe, any person who is permitted to attend a course of instruction prescribed for members of a reserve officers' training corps, and who is not a member of that corps, may, while attending that course of instruction, wear the uniform of that corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 35; Mar. 28, 1958, P.L. 85–355, 72 Stat. 66.)

§ 774. Religious apparel: wearing while in uniform

(a) GENERAL RULE.—Except as provided under subsection (b), a member of the armed forces may wear an item of religious apparel while wearing the uniform of the member's armed force.

(b) EXCEPTIONS.—The Secretary concerned may prohibit the wearing of an item of religious apparel—

(1) in circumstances with respect to which the Secretary determines that the wearing of the item would interfere with the performance of the member's military duties; or

(2) if the Secretary determines, under regulations under subsection (c), that the item of apparel is not neat and conservative.

(c) REGULATIONS.—The Secretary concerned shall prescribe regulations concerning the wearing of religious apparel by members of the armed forces under the Secretary's jurisdiction while the members are wearing the uniform. Such regulations shall be consistent with subsections (a) and (b).

(d) RELIGIOUS APPAREL DEFINED.—In this section, the term "religious apparel" means apparel the wearing of which is part of the observance of the religious faith practiced by the member.

(Added P.L. 100–180, § 508(a)(2), Dec. 4, 1987, 101 Stat. 1086.)

§ 775. Issue of uniform without charge

(a) ISSUE OF UNIFORM.—The Secretary concerned may issue a uniform, without charge, to any of the following members:

(1) A member who is being repatriated after being held as a prisoner of war.

(2) A member who is being treated at or released from a medical treatment facility as a consequence of being wounded or injured during military hostilities.

(3) A member who, as a result of the member's duties, has unique uniform requirements.

(4) Any other member, if the Secretary concerned determines, under exceptional circumstances, that the issue of the uniform to that member would significantly benefit the morale and welfare of the member and be advantageous to the armed force concerned.

(b) RETENTION OF UNIFORM AS A PERSONAL ITEM.—Notwithstanding section 771a of this title, a uniform issued to a member under this section may be retained by the member as a personal item.

(Added P.L. 102–484, § 377(a)(2), Oct. 23, 1992, 106 Stat. 2386.)

§ 776. Applicability of chapter

This chapter applies in—

(1) the United States;

(2) the territories, commonwealths, and possessions of the United States; and

(3) all other places under the jurisdiction of the United States.

(Aug. 10, 1956, § 774, ch. 1041, 70A Stat. 36; Nov. 14, 1986, P.L. 99–661, § 1343(a)(1), 100 Stat. 3992; redesignated § 775, P.L. 100–180, § 508(a)(1), Dec. 4, 1987, 101 Stat. 1086; redesignated § 776 P.L. 102–484, § 377(a)(1), Oct. 23, 1992, 106 Stat. 2386.)

§ 777. Wearing of insignia of higher grade before promotion (frocking): authority; restrictions

(a) AUTHORITY.—An officer who has been selected for promotion to the next higher grade may be authorized, under regulations and policies of the Department of Defense and subject to subsection (b), to wear the insignia for that next higher grade. An officer who is so authorized to wear the insignia of the next higher grade is said to be "frocked" to that grade.

(b) RESTRICTIONS.—An officer may not be authorized to wear the insignia for a grade as described in subsection (a) unless—

(1) the Senate has given its advice and consent to the appointment of the officer to that grade; and

(2) the officer is serving in, or has received orders to serve in, a position for which that grade is authorized.

(c) BENEFITS NOT TO BE CONSTRUED AS ACCRUING.—(1) Authority provided to an officer as described in subsection (a) to wear the insignia of the next higher grade may not be construed as conferring authority for that officer to—

(A) be paid the rate of pay provided for an officer in that grade having the same number of years of service as that officer; or

(B) assume any legal authority associated with that grade.

(2) The period for which an officer wears the insignia of the next higher grade under such authority may not be taken into account for any of the following purposes:

(A) Seniority in that grade.

(B) Time of service in that grade.

(d) LIMITATION ON NUMBER OF OFFICERS FROCKED TO SPECIFIED GRADES.—(1) The total number of colonels and Navy captains on the active-duty list who are authorized as described in subsection (a) to wear the insignia for the grade of brigadier general or rear admiral (lower half), as the case may be, may not exceed 55.

(2) The number of officers of an armed force on the active-duty list who are authorized as described in subsection (a) to wear the insignia for a grade to which a limitation on total number applies under section 523(a) of this title for a fiscal year may not exceed 1 percent, or, for the grades of colonel and Navy captain, 2 percent, of the total number provided for the officers in that grade in that armed force in the administration of the limitation under that section for that fiscal year.

(Added P.L. 104–106, § 503(a)(1), Feb. 10, 1996, 110 Stat. 294; amended P.L. 105–85, § 505, Nov. 18, 1997, 111 Stat. 1726; P.L. 106–65, § 502, Oct. 5, 1999, 113 Stat. 590.)

CHAPTER 47—UNIFORM CODE OF MILITARY JUSTICE

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SUBCHAPTER I—GENERAL PROVISIONS

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§ 801. Article 1. Definitions

In this chapter:

(1) The term "Judge Advocate General" means, severally, the Judge Advocates General of the Army, Navy, and Air Force and, except when the Coast Guard is operating as a service in the Navy, the General Counsel of the Department of Transportation.

(2) The Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Navy, shall be considered as one armed force.

(3) The term "commanding officer" includes only commissioned officers.

(4) The term "officer in charge" means a member of the Navy, the Marine Corps, or the Coast Guard designated as such by appropriate authority.

(5) The term "superior commissioned officer" means a commissioned officer superior in rank or command.

(6) The term "cadet" means a cadet of the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy.

(7) The term "midshipman" means a midshipman of the United States Naval Academy and any other midshipman on active duty in the naval service.

(8) The term "military" refers to any or all of the armed forces.

(9) The term "accuser" means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused.

(10) The term "military judge" means an official of a general or special court-martial detailed in accordance with section 826 of this title (article 26).

(11) The term "law specialist" means a commissioned officer of the Coast Guard designated for special duty (law).

(12) The term "legal officer" means any commissioned officer of the Navy, Marine Corps, or Coast Guard designated to perform legal duties for a command.

(13) The term "judge advocate" means—

(A) an officer of the Judge Advocate General's Corps of the Army or the Navy;

(B) an officer of the Air Force or the Marine Corps who is designated as a judge advocate; or

(C) an officer of the Coast Guard who is designated as a law specialist.

(14) The term "record," when used in connection with the proceedings of a court-martial, means—

(A) an official written transcript, written summary, or other writing relating to the proceedings; or

(B) an official audiotape, videotape, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced.

(15) The term "classified information" means (A) any information or material that has been determined by an official of the United States pursuant to law, an Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security, and (B) any restricted data, as defined in section 11(y) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

(16) The term "national security" means the national defense and foreign relations of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 36; Oct. 15, 1966, P.L. 89–670, § 10(g), 80 Stat. 948; Dec. 8, 1967, P.L. 90–179, § 1(1), (2), 81 Stat. 545; Oct. 24, 1968, P.L. 90–632, § 2(1), 82 Stat. 1335; Dec. 6, 1983, P.L. 98–209, §§ 2(a), 6(a), 97 Stat. 1393, 1400; Dec. 4, 1987, P.L. 100–180, § 1231 (17), 101 Stat. 1161; Sept. 29, 1988, P.L. 100–456, § 1233(f), 102 Stat. 2057; Nov. 29, 1989, P.L. 101–189, § 1304(a), 103 Stat. 1576; Feb. 10, 1996, P.L. 104–106, § 1141(b), 110 Stat. 467.)

§ 802. Art. 2. Persons subject to this chapter

(a) The following persons are subject to this chapter:

(1) Members of a regular component of the armed forces, including those awaiting discharge after expiration of their terms of enlistment; volunteers from the time of their muster or acceptance into the armed forces; inductees from the time of their actual induction into the armed forces; and other persons lawfully called or ordered into, or to duty in or for training in, the armed forces, from the dates when they are required by the terms of the call or order to obey it.

(2) Cadets, aviation cadets, and midshipmen.

(3) Members of a reserve component while on inactive-duty training, but in the case of members of the Army National

Guard of the United States or the Air National Guard of the United States only when in Federal service.

(4) Retired members of a regular component of the armed forces who are entitled to pay.

(5) Retired members of a reserve component who are receiving hospitalization from an armed force.

(6) Members of the Fleet Reserve and Fleet Marine Corps Reserve.

(7) Persons in custody of the armed forces serving a sentence imposed by a court-martial.

(8) Members of the National Oceanic and Atmospheric Administration, Public Health Service, and other organizations, when assigned to and serving with the armed forces.

(9) Prisoners of war in custody of the armed forces.

(10) In time of war, persons serving with or accompanying an armed force in the field.

(11) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(12) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons within an area leased by or otherwise reserved or acquired for the use of the United States which is under the control of the Secretary concerned and which is outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(b) The voluntary enlistment of any person who has the capacity to understand the significance of enlisting in the armed forces shall be valid for purposes of jurisdiction under subsection (a) and a change of status from civilian to member of the armed forces shall be effective upon the taking of the oath of enlistment.

(c) Notwithstanding any other provision of law, a person serving with an armed force who—

(1) submitted voluntarily to military authority;

(2) met the mental competency and minimum age qualifications of sections 504 and 505 of this title at the time of voluntary submission to military authority;

(3) received military pay or allowances; and

(4) performed military duties;

is subject to this chapter until such person's active service has been terminated in accordance with law or regulations promulgated by the Secretary concerned.

(d)(1) A member of a reserve component who is not on active duty and who is made the subject of proceedings under section 815 (article 15) or section 830 (article 30) with respect to an offense against this chapter may be ordered to active duty involuntarily for the purpose of—

(A) investigation under section 832 of this title (article 32);

(B) trial by court-martial; or

(C) nonjudicial punishment under section 815 of this title (article 15).

(2) A member of a reserve component may not be ordered to active duty under paragraph (1) except with respect to an offense committed while the member was—

(A) on active duty; or

(B) on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service.

(3) Authority to order a member to active duty under paragraph (1) shall be exercised under regulations prescribed by the President.

(4) A member may be ordered to active duty under paragraph (1) only by a person empowered to convene general courts-martial in a regular component of the armed forces.

(5) A member ordered to active duty under paragraph (1), unless the order to active duty was approved by the Secretary concerned, may not—

(A) be sentenced to confinement; or

(B) be required to serve a punishment consisting of any restriction on liberty during a period other than a period of inactive-duty training or active duty (other than active duty ordered under paragraph (1)).

(e) The provisions of this section are subject to section 876b(d)(2) of this title (article 76b(d)(2)).

(Aug. 10, 1956, ch. 1041, 70A Stat. 37; June 25, 1959, P.L. 86–70, § 6(b), 73 Stat. 142; July 12, 1960, P.L. 86–624, § 4(b), 74 Stat. 411; Sept. 7, 1962, P.L. 87–651, § 104, 76 Stat. 508; Nov. 2, 1966, P.L. 89–718, § 8(a), 80 Stat. 1117; Nov. 9, 1979, P.L. 96–107, § 801(a), 93 Stat. 810; Dec. 12, 1980, P.L. 96–513, § 511(24), 94 Stat. 2922; Dec. 6, 1983, P.L. 98–209, § 13(a), 97 Stat. 1408; Nov. 14, 1986, P.L. 99–661, § 804(a), 100 Stat. 3906; Sept. 29, 1988, P.L. 100–456, § 1234(a), 102 Stat. 2059; Feb. 10, 1996, P.L. 104–106, § 1133(b), 110 Stat. 466.)

§ 803. Art. 3. Jurisdiction to try certain personnel

(a) Subject to section 843 of this title (article 43), a person who is in a status in which the person is subject to this chapter and who committed an offense against this chapter while formerly in a status in which the person was subject to this chapter is not relieved from amenability to the jurisdiction of this chapter for that offense by reason of a termination of that person's former status.

(b) Each person discharged from the armed forces who is later charged with having fraudulently obtained his discharge is, subject to section 843 of this title (article 43), subject to trial by court-martial on that charge and is after apprehension subject to this chapter while in the custody of the armed forces for that trial. Upon conviction of that charge he is subject to trial by court-martial for all offenses under this chapter committed before the fraudulent discharge.

(c) No person who has deserted from the armed forces may be relieved from amenability to the jurisdiction of this chapter by virtue of a separation from any later period of service.

(d) A member of a reserve component who is subject to this chapter is not, by virtue of the termination of a period of active duty or inactive-duty training, relieved from amenability to the

jurisdiction of this chapter for an offense against this chapter committed during such period of active duty or inactive-duty training.

(Aug. 10, 1956, ch. 1041, 70A Stat. 38; Nov. 14, 1986, P.L. 99–661, § 804(b), 100 Stat. 3907; Oct. 23, 1992, P.L. 102–484, § 1063, 106 Stat. 2505.)

§ 804. Art. 4. Dismissed officer's right to trial by court-martial

(a) If any commissioned officer, dismissed by order of the President, makes a written application for trial by court-martial, setting forth, under oath, that he has been wrongfully dismissed, the President, as soon as practicable, shall convene a general court-martial to try that officer on the charges on which he was dismissed. A court-martial so convened has jurisdiction to try the dismissed officer on those charges, and he shall be considered to have waived the right to plead any statute of limitations applicable to any offense with which he is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, does not include dismissal or death, the Secretary concerned shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issue.

(b) If the President fails to convene a general court-martial within six months from the presentation of an application for trial under this article, the Secretary concerned shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issue.

(c) If a discharge is substituted for a dismissal under this article, the President alone may reappoint the officer to such commissioned grade and with such rank as, in the opinion of the President, that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

(d) If an officer is discharged from any armed force by administrative action or is dropped from the rolls by order of the President, he has no right to trial under this article.

(Aug. 10, 1956, ch. 1041, 70A Stat. 38.)

§ 805. Art. 5. Territorial applicability of this chapter

This chapter applies in all places.

(Aug. 10, 1956, ch. 1041, 70A Stat. 39.)

§ 806. Art. 6. Judge advocates and legal officers

(a) The assignment for duty of judge advocates of the Army, Navy, Air Force, and Coast Guard shall be made upon the recommendation of the Judge Advocate General of the armed force of which they are members. The assignment for duty of judge advocates of the Marine Corps shall be made by direction of the Commandant of the Marine Corps. The Judge Advocate General or sen-

ior members of his staff shall make frequent inspections in the field in supervision of the administration of military justice.

(b) Convening authorities shall at all times communicate directly with their staff judge advocates or legal officers in matters relating to the administration of military justice; and the staff judge advocate or legal officer of any command is entitled to communicate directly with the staff judge advocate or legal officer of a superior or subordinate command, or with the Judge Advocate General.

(c) No person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer in any case may later act as a staff judge advocate or legal officer to any reviewing authority upon the same case.

(d)(1) A judge advocate who is assigned or detailed to perform the functions of a civil office in the Government of the United States under section 973(b)(2)(B) of this title may perform such duties as may be requested by the agency concerned, including representation of the United States in civil and criminal cases.

(2) The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations providing that reimbursement may be a condition of assistance by judge advocates assigned or detailed under section 973(b)(2)(B) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 39; Dec. 8, 1967, P.L. 90–179, § 1(3), 81 Stat. 545; Oct. 24, 1968, P.L. 90–632, § 2(2), 82 Stat. 1335; Dec. 6, 1983, P.L. 98–209, § 2(b), 97 Stat. 1393; Nov. 14, 1986, P.L. 99–661, § 807(a), 100 Stat. 3909.)

§ 806a. Art. 6a. Investigation and disposition of matters pertaining to the fitness of military judges

(a) The President shall prescribe procedures for the investigation and disposition of charges, allegations, or information pertaining to the fitness of a military judge or military appellate judge to perform the duties of the judge's position. To the extent practicable, the procedures shall be uniform for all armed forces.

(b) The President shall transmit a copy of the procedures prescribed pursuant to this section to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(Added P.L. 101–189, § 1303, Nov. 29, 1989, 103 Stat. 1576; amended P.L. 104–106, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

SUBCHAPTER II—APPREHENSION AND RESTRAINT

Sec.	Art.	
807.	7.	Apprehension.
808.	8.	Apprehension of deserters.
809.	9.	Imposition of restraint.
810.	10.	Restraint of persons charged with offenses.
811.	11.	Reports and receiving of prisoners.
812.	12.	Confinement with enemy prisoners prohibited.
813.	13.	Punishment prohibited before trial.
814.	14.	Delivery of offenders to civil authorities.

§ 807. Art. 7. Apprehension

(a) Apprehension is the taking of a person into custody.

(b) Any person authorized under regulations governing the armed forces to apprehend persons subject to this chapter or to trial thereunder may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(c) Commissioned officers, warrant officers, petty officers, and noncommissioned officers have authority to quell quarrels, frays, and disorders among persons subject to this chapter and to apprehend persons subject to this chapter who take part therein.

(Aug. 10, 1956, ch. 1041, 70A Stat. 39.)

§ 808. Art. 8. Apprehension of deserters

Any civil officer having authority to apprehend offenders under the laws of the United States or of a State, Territory, Commonwealth, or possession, or the District of Columbia may summarily apprehend a deserter from the armed forces and deliver him into the custody of those forces.

(Aug. 10, 1956, ch. 1041, 70A Stat. 40.)

§ 809. Art. 9. Imposition of restraint

(a) Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing him to remain within certain specified limits. Confinement is the physical restraint of a person.

(b) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this chapter. A commanding officer may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted members of his command or subject to his authority into arrest or confinement.

(c) A commissioned officer, a warrant officer, or a civilian subject to this chapter or to trial thereunder may be ordered into arrest or confinement only by a commanding officer to whose authority he is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons into arrest or confinement may not be delegated.

(d) No person may be ordered into arrest or confinement except for probable cause.

(e) Nothing in this article limits the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

(Aug. 10, 1956, ch. 1041, 70A Stat. 40.)

§ 810. Art. 10. Restraint of persons charged with offenses

Any person subject to this chapter charged with an offense under this chapter shall be ordered into arrest or confinement, as circumstances may require; but when charged only with an offense normally tried by a summary court-martial, he shall not ordinarily be placed in confinement. When any person subject to this chapter is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 40.)

§ 811. Art. 11. Reports and receiving of prisoners

(a) No provost marshal, commander of a guard, or master at arms may refuse to receive or keep any prisoner committed to his charge by a commissioned officer of the armed forces, when the committing officer furnishes a statement, signed by him, of the offense charged against the prisoner.

(b) Every commander of a guard or master at arms to whose charge a prisoner is committed shall, within twenty-four hours after that commitment or as soon as he is relieved from guard, report to the commanding officer the name of the prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 40.)

§ 812. Art. 12. Confinement with enemy prisoners prohibited

No member of the armed forces may be placed in confinement in immediate association with enemy prisoners or other foreign nationals not members of the armed forces.

(Aug. 10, 1956, ch. 1041, 70A Stat. 41.)

§ 813. Art. 13. Punishment prohibited before trial

No person, while being held for trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence, but he may be subjected to minor punishment during that period for infractions of discipline.

(Aug. 10, 1956, ch. 1041, 70A Stat. 41; Nov. 20, 1981, P.L. 97–81, § 3, 95 Stat. 1087.)

§ 814. Art. 14. Delivery of offenders to civil authorities

(a) Under such regulations as the Secretary concerned may prescribe, a member of the armed forces accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(b) When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for his offense shall, upon the request of competent military authority, be returned to military custody for the completion of his sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 41.)

SUBCHAPTER III—NON–JUDICIAL PUNISHMENT

Sec. Art.
815. 15. Commanding officer's non-judicial punishment.

§ 815. Art. 15. Commanding officer's non-judicial punishment

(a) Under such regulations as the President may prescribe, and under such additional regulations as may be prescribed by the Secretary concerned, limitations may be placed on the powers granted by this article with respect to the kind and amount of punishment

authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of this article to an accused who demands trial by court-martial, and the kinds of courts-martial to which the case may be referred upon such a demand. However, except in the case of a member attached to or embarked in a vessel, punishment may not be imposed upon any member of the armed forces under this article if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder. If authorized by regulations of the Secretary concerned, a commanding officer exercising general court-martial jurisdiction or an officer or general or flag rank in command may delegate his powers under this article to a principal assistant.

(b) Subject to subsection (a), any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial—

(1) upon officers of his command—

(A) restriction to certain specified limits, with or without suspension from duty, for not more than 30 consecutive days;

(B) if imposed by an officer exercising general court-martial jurisdiction or an officer of general or flag rank in command—

(i) arrest in quarters for not more than 30 consecutive days;

(ii) forfeiture of not more than one-half of one month's pay per month for two months;

(iii) restriction to certain specified limits, with or without suspension from duty, for not more than 60 consecutive days;

(iv) detention of not more than one-half of one month's pay per month for three months;

(2) upon other personnel of his command—

(A) if imposed upon a person attached to or embarked in a vessel, confinement on bread and water or diminished rations for not more than three consecutive days;

(B) correctional custody for not more than seven consecutive days;

(C) forfeiture of not more than seven days' pay;

(D) reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(E) extra duties, including fatigue or other duties, for not more than 14 consecutive days;

(F) restriction to certain specified limits, with or without suspension from duty, for not more than 14 consecutive days;

(G) detention of not more than 14 days' pay;

(H) if imposed by an officer of the grade of major or lieutenant commander, or above—

(i) the punishment authorized under clause (A);

(ii) correctional custody for not more than 30 consecutive days;

(iii) forfeiture of not more than one-half of one month's pay per month for two months;

(iv) reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E–4 may not be reduced more than two pay grades;

(v) extra duties, including fatigue or other duties, for not more than 45 consecutive days;

(vi) restrictions to certain specified limits, with or without suspension from duty, for not more than 60 consecutive days;

(vii) detention of not more than one-half of one month's pay per month for three months.

Detention of pay shall be for a stated period of not more than one year but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No two or more of the punishments of arrest in quarters, confinement on bread and water or diminished rations, correctional custody, extra duties, and restriction may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment. In addition, forfeiture of pay may not be combined with detention of pay without an apportionment. For the purposes of this subsection, "correctional custody" is the physical restraint of a person during duty or nonduty hours and may include extra duties, fatigue duties, or hard labor. If practicable, correctional custody will not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by court-martial.

(c) An officer in charge may impose upon enlisted members assigned to the unit of which he is in charge such of the punishments authorized under subsection (b)(2)(A)–(G) as the Secretary concerned may specifically prescribe by regulation.

(d) The officer who imposes the punishment authorized in subsection (b), or his successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or a forfeiture imposed under subsection (b), whether or not executed. In addition, he may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and property affected. He may also mitigate reduction in grade to forfeiture or detention of pay. When mitigating—

(1) arrest in quarters to restriction;

(2) confinement on bread and water or diminished rations to correctional custody;

(3) correctional custody or confinement on bread and water or diminished rations to extra duties or restriction, or both; or

(4) extra duties to restriction;

the mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating forfeiture of pay to detention of pay, the amount of the detention shall not be greater than the amount of the forfeiture. When mitigating reduction in grade to forfeiture or detention of pay, the amount of the forfeiture of detention shall not be greater than the amount that could have been imposed initially under this article by the officer who imposed the punishment mitigated.

(e) A person punished under this article who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (d) by the officer who imposed the punishment. Before acting on an appeal from a punishment of—

(1) arrest in quarters for more than seven days;

(2) correctional custody for more than seven days;

(3) forfeiture of more than seven days' pay;

(4) reduction of one or more pay grades from the fourth or a higher pay grade;

(5) extra duties for more than 14 days;

(6) restriction for more than 14 days; or

(7) detention of more than 14 days' pay;

the authority who is to act on the appeal shall refer the case to a judge advocate or a lawyer of the Department of Transportation for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (b).

(f) The imposition and enforcement of disciplinary punishment under this article for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this article; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(g) The Secretary concerned may, by regulation, prescribe the form of records to be kept of proceedings under this article and may also prescribe that certain categories of those proceedings shall be in writing.

(Aug. 10, 1956, ch. 1041, 70A Stat. 41; Sept. 7, 1962, P.L. 87–648, § 1, 76 Stat. 447; Dec. 8, 1967, P.L. 90–179, § 1(4), 81 Stat. 545; Oct. 22, 1968, P.L. 90–623, § 2(4), 82 Stat. 1314; Dec. 6, 1983, P.L. 98–209, § 2(c), 13(b), 97 Stat. 1393, 1408.)

SUBCHAPTER IV—COURT-MARTIAL JURISDICTION

Sec.	Art.	
816.	16.	Courts-martial classified.
817.	17.	Jurisdiction of courts-martial in general.
818.	18.	Jurisdiction of general courts-martial.
819.	19.	Jurisdiction of special courts-martial.
820.	20.	Jurisdiction of summary courts-martial.
821.	21.	Jurisdiction of courts-martial not exclusive.

§ 816. Art. 16. Courts-martial classified

The three kinds of courts-martial in each of the armed forces are—

(1) general courts-martial, consisting of—

(A) a military judge and not less than five members; or

(B) only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests orally on the record or in writing a court composed only of a military judge and the military judge approves;

(2) special courts-martial, consisting of—

(A) not less than three members; or

(B) a military judge and not less than three members; or

(C) only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in clause (1)(B) so requests; and

(3) summary courts-martial, consisting of one commissioned officer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 42; Oct. 24, 1968, P.L. 90–632, § 2(3), 82 Stat. 1335; Dec. 6, 1983, P.L. 98–209, § 3(a), 97 Stat. 1394.)

§ 817. Art. 17. Jurisdiction of courts-martial in general

(a) Each armed force has court-martial jurisdiction over all persons subject to this chapter. The exercise of jurisdiction by one armed force over personnel of another armed force shall be in accordance with regulations prescribed by the President.

(b) In all cases, departmental review after that by the officer with authority to convene a general court-martial for the command which held the trial, where that review is required under this chapter, shall be carried out by the department that includes the armed force of which the accused is a member.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43.)

§ 818. Art. 18. Jurisdiction of general courts-martial

Subject to section 817 of this title (article 17), general courts-martial have jurisdiction to try persons subject to this chapter for any offense made punishable by this chapter and may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when specifically authorized by this chapter. General courts-martial also have jurisdiction to try any person who by the law of war is subject to trial by a military tribunal and may adjudge any punishment permitted by the law of war. However, a general court-martial of the kind specified in section 816(1)(B) of this title (article 16(1)(B)) shall not have jurisdiction to try any person for any offense for which the death penalty may be adjudged unless the case has been previously referred to trial as a noncapital case.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43; Oct. 24, 1968, P.L. 90–632, § 2(4), 82 Stat. 1335.)

§ 819. Art. 19. Jurisdiction of special courts-martial

Subject to section 817 of this title (article 17), special courts-martial have jurisdiction to try persons subject to this chapter for any noncapital offense made punishable by this chapter and, under such regulations as the President may prescribe, for capital offenses. Special courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter except death, dishonorable discharge, dismissal, confinement for more than one year, hard labor without confinement for more than three months, forfeiture of pay exceeding two-thirds pay per month, or forfeiture of pay for more than one year. A bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months may not be adjudged unless a complete record of the proceedings and testimony has been made, counsel having the qualifications prescribed under section 827(b) of this title (article 27(b)) was detailed to represent the accused, and a military judge was detailed to the trial, except in any case in which a military judge could not be detailed to the trial because of physical conditions or military exigencies. In any such case in which a military judge was not detailed to the trial, the convening authority shall make a detailed written statement, to be appended to the record, stating the reason or reasons a military judge could not be detailed.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43; Oct. 24, 1968, P.L. 90–632, § 2(5), 82 Stat. 1335; amended P.L. 106–65, § 577(a), Oct. 5, 1999, 113 Stat. 625.)

§ 820. Art. 20. Jurisdiction of summary courts-martial

Subject to section 817 of this title (article 17), summary courts-martial have jurisdiction to try persons subject to this chapter, except officers, cadets, aviation cadets, and midshipmen, for any noncapital offense made punishable by this chapter. No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if he objects thereto. If objection to trial by summary court-martial is made by an accused, trial may be ordered by special or general court-martial as may be appropriate. Summary courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter except death, dismissal, dishonorable or bad-conduct discharge, confinement for more than one month, hard-labor without confinement for more than 45 days, restriction to specified limits for more than two months, or forfeiture of more than two-thirds of one month's pay.

(Aug. 10, 1956, ch. 1041, 70A Stat 43; Oct. 24, 1968, P.L. 90–632, § 2(6), 82 Stat. 1336.)

§ 821. Art. 21. Jurisdiction of courts-martial not exclusive

The provisions of this chapter conferring jurisdiction upon courts-martial do not deprive military commissions, provost courts, or other military tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by military commissions, provost courts, or other military tribunals.

(Aug. 10, 1956, ch. 1041, 70A Stat. 44.)

SUBCHAPTER V—COMPOSITION OF COURTS-MARTIAL

Sec. Art.
822. 22. Who may convene general courts-martial.
823. 23. Who may convene special courts-martial.
824. 24. Who may convene summary courts-martial.
825. 25. Who may serve on courts-martial.
826. 26. Military judge of a general or special court-martial.
827. 27. Detail of trial counsel and defense counsel.
828. 28. Detail or employment of reporters and interpreters.
829. 29. Absent and additional members.

§ 822. Art. 22. Who may convene general courts-martial

(a) General courts-martial may be convened by—

(1) the President of the United States;

(2) the Secretary of Defense;

(3) the commanding officer of a unified or specified combatant command;

(4) the Secretary concerned;

(5) the commanding officer of a Territorial Department, an Army Group, an Army, an Army Corps, a division, a separate brigade, or a corresponding unit of the Army or Marine Corps;

(6) the commander in chief of a fleet; the commanding officer of a naval station or larger shore activity of the Navy beyond the United States;

(7) the commanding officer of an air command, an air force, an air division, or a separate wing of the Air Force or Marine Corps;

(8) any other commanding officer designated by the Secretary concerned; or

(9) any other commanding officer in any of the armed forces when empowered by the President.

(b) If any such commanding officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered desirable by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 44; Oct. 1, 1986, P.L. 99–433, § 211(b), 100 Stat. 1017.)

§ 823. Art. 23. Who may convene special courts-martial

(a) Special courts-martial may be convened by—

(1) any person who may convene a general court-martial;

(2) the commanding officer of a district, garrison, fort, camp, station, Air Force base, auxiliary air field, or other place where members of the Army or the Air Force are on duty;

(3) the commanding officer of a brigade, regiment, detached battalion, or corresponding unit of the Army;

(4) the commanding officer of a wing, group, or separate squadron of the Air Force;

(5) the commanding officer of any naval or Coast Guard vessel, shipyard, base, or station; the commanding officer of any Marine brigade, regiment, detached battalion, or corresponding unit; the commanding officer of any Marine barracks, wing, group, separate squadron, station, base, auxiliary air field, or other place where members of the Marine Corps are on duty;

(6) the commanding officer of any separate or detached command or group of detached units of any of the armed forces placed under a single commander for this purpose; or

(7) the commanding officer or officer in charge of any other command when empowered by the Secretary concerned.

(b) If any such officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered advisable by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 44.)

§ 824. Art. 24. Who may convene summary courts-martial

(a) Summary courts-martial may be convened by—

(1) any person who may convene a general or special court-martial;

(2) the commanding officer of a detached company, or other detachment of the Army;

(3) the commanding officer of a detached squadron or other detachment of the Air Force; or

(4) the commanding officer or officer in charge of any other command when empowered by the Secretary concerned.

(b) When only one commissioned officer is present with a command or detachment he shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him. Summary courts-martial may, however, be convened in any case by superior competent authority when considered desirable by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 45.)

§ 825. Art. 25. Who may serve on courts-martial

(a) Any commissioned officer on active duty is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer on active duty is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(c)(1) Any enlisted member of an armed force on active duty who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member of an armed force who may lawfully be brought before such courts for trial, but he shall serve as a member of a court only if, before the conclusion of a session called by the military judge under section 839(a) of this title (article 39(a)) prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested orally on the record or in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least, one-third of the total membership of the court, unless eligible enlisted members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be assembled and the trial held without them, but the con-

vening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

(2) In this article, "unit" means any regularly organized body as defined by the Secretary concerned, but in no case may it be a body larger than a company, squadron, ship's crew, or body corresponding to one of them.

(d)(1) When it can be avoided, no member of an armed force may be tried by a court-martial any member of which is junior to him in rank or grade.

(2) When convening a court-martial, the convening authority shall detail as members thereof such members of the armed forces as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

(e) Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case. Under such regulations as the Secretary concerned may prescribe, the convening authority may delegate his authority under this subsection to his staff judge advocate or legal officer or to any other principal assistant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 45; Oct. 24, 1968, P.L. 90–632, § 2(7), 82 Stat. 1336; Dec. 6, 1983, P.L. 98–209, § 3(b), 13(c), 97 Stat. 1394, 1408; Nov. 14, 1986, P.L. 99–661, § 803(a), 100 Stat. 3906.)

§ 826. Art. 26. Military judge of a general or special court-martial

(a) A military judge shall be detailed to each general court-martial. Subject to regulations of the Secretary concerned, a military judge may be detailed to any special court-martial. The Secretary concerned shall prescribe regulations providing for the manner in which military judges are detailed for such courts-martial and for the persons who are authorized to detail military judges for such courts-martial. The military judge shall preside over each open session of the court-martial to which he has been detailed.

(b) A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court or a member of the bar of the highest court of a State and who is certified to be qualified for duty as a military judge by the Judge Advocate General of the armed force of which such military judge is a member.

(c) The military judge of a general court-martial shall be designated by the Judge Advocate General, or his designee, of the armed force of which the military judge is a member for detail in accordance with regulations prescribed under subsection (a). Unless the court-martial was convened by the President or the Secretary concerned, neither the convening authority nor any member of his staff shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to his performance of duty as a military judge. A commissioned officer who is certified to be qualified for duty as a military judge of a general court-martial may perform such duties only

when he is assigned and directly responsible to the Judge Advocate General, or his designee, of the armed force of which the military judge is a member and may perform duties of a judicial or nonjudicial nature other than those relating to his primary duty as a military judge of a general court-martial when such duties are assigned to him by or with the approval of that Judge Advocate General or his designee.

(d) No person is eligible to act as military judge in a case if he is the accuser or a witness for the prosecution or has acted as investigating officer or a counsel in the same case.

(e) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor may he vote with the members of the court.

(Aug. 10, 1956, ch. 1041, 70A Stat 46; Oct. 24, 1968, P.L. 90–632, § 2(9), 82 Stat. 1336; Dec. 6, 1983, P.L. 98–209, § 3(c)(1), 97 Stat. 1394.)

§ 827. Art. 27. Detail of trial counsel and defense counsel

(a)(1) Trial counsel and defense counsel shall be detailed for each general and special court-martial. Assistant trial counsel and assistant and associate defense counsel may be detailed for each general and special court-martial. The Secretary concerned shall prescribe regulations providing for the manner in which counsel are detailed for such courts-martial and for the persons who are authorized to detail counsel for such courts-martial.

(2) No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant or associate defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(b) Trial counsel or defense counsel detailed for a general court-martial—

(1) must be a judge advocate who is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; or must be a member of the bar of a Federal court or of the highest court of a State; and

(2) must be certified as competent to perform such duties by the Judge Advocate General of the armed force of which he is a member.

(c) In the case of a special court-martial—

(1) the accused shall be afforded the opportunity to be represented at the trial by counsel having the qualifications prescribed under section 827(b) of this title (article 27(b)) unless counsel having such qualifications cannot be obtained on account of physical conditions or military exigencies. If counsel having such qualifications cannot be obtained, the court may be convened and the trial held but the convening authority shall make a detailed written statement, to be appended to the record, stating why counsel with such qualifications could not be obtained;

(2) if the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified; and

(3) if the trial counsel is a judge advocate or a member of the bar of a Federal court or the highest court of a State, the defense counsel detailed by the convening authority must be one of the foregoing.

(Aug. 10, 1956, ch. 1041, 70A Stat. 46; Dec. 8, 1967, P.L. 90–179, § 1(5), 81 Stat. 546; Oct. 24, 1968, P.L. 90–632, § 2(10), 82 Stat. 1337; Dec. 6, 1983, P.L. 98–209, §§ 2(d), 3(c)(2), 97 Stat. 1393, 1394.)

§ 828. Art. 28. Detail or employment of reporters and interpreters

Under such regulations as the Secretary concerned may prescribe, the convening authority of a court-martial, military commission, or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court or commission. Under like regulations the convening authority of a court-martial, military commission, or court of inquiry may detail or employ interpreters who shall interpret for the court or commission.

(Aug. 10, 1956, ch. 1041, 70A Stat. 47.)

§ 829. Art. 29. Absent and additional members

(a) No member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause.

(b) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below five members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than five members. The trial may proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(c) Whenever a special court-martial, other than a special court-martial composed of a military judge only, is reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three members. The trial shall proceed with the new members present as if no evidence had previously been introduced at the trial, unless a verbatim record of the evidence previously introduced before the members of the court or a stipulation thereof is read to the court in the presence of the military judge, if any, the accused and counsel for both sides.

(d) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of section 816(1)(B) or (2)(C) of this title (article 16(1)(B) or (2)(C)), after the detail of a new military judge as if no evidence had previously

been introduced, unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides.

(Aug. 10, 1956, ch. 1041, 70A Stat. 47; Oct. 24, 1968, P.L. 90–632, § 2(11), 82 Stat. 1337; Dec. 6, 1983, P.L. 98–209, § 3(d), 97 Stat. 1394.)

SUBCHAPTER VI—PRE–TRIAL PROCEDURE

Sec.	Art.	
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831.	31.	Compulsory self-incrimination prohibited.
832.	32.	Investigation.
833.	33.	Forwarding of charges.
834.	34.	Advice of staff judge advocate and reference for trial.
835.	35.	Service of charges.

§ 830. Art. 30. Charges and specifications

(a) Charges and specifications shall be signed by a person subject to this chapter under oath before a commissioned officer of the armed forces authorized to administer oaths and shall state—

(1) that the signer has personal knowledge of or has investigated, the matters set forth therein; and

(2) that they are true in fact to the best of his knowledge and belief.

(b) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him as soon as practicable.

(Aug. 10, 1956, ch. 1041, 70A Stat. 47.)

§ 831. Art. 31. Compulsory self-incrimination prohibited

(a) No person subject to this chapter may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this chapter may interrogate, or request any statement from, an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) No person subject to this chapter may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) No statement obtained from any person in violation of this article, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 48.)

§ 832. Art. 32. Investigation

(a) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges against him and of his right to be represented at that investigation by counsel. The accused has the right to be represented at that investigation as provided in section 838 of this title (article 38) and in regulations prescribed under that section. At that investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(c) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b), no further investigation of that charge is necessary under this article unless it is demanded by the accused after he is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his own behalf.

(d) If evidence adduced in an investigation under this article indicates that the accused committed an uncharged offense, the investigating officer may investigate the subject matter of that offense without the accused having first been charged with the offense if the accused—

(1) is present at the investigation;

(2) is informed of the nature of each uncharged offense investigated; and

(3) is afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b).

(e) The requirements of this article are binding on all persons administering this chapter but failure to follow them does not constitute jurisdictional error.

(Aug. 10, 1956, ch. 1041, 70A Stat. 48; Nov. 20, 1981, P.L. 97–81, § 4(a), 95 Stat. 1088; Feb. 10, 1996, P.L. 104–106, § 1131, 110 Stat. 464.)

§ 833. Art. 33. Forwarding of charges

When a person is held for trial by general court-martial the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the officer exercising general court-martial jurisdiction. If that is not practicable, he shall report in writing to that officer the reasons for delay.

(Aug. 10, 1956, ch. 1041, 70A Stat. 49.)

§ 834. Art. 34. Advice of staff judge advocate and reference for trial

(a) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to his staff judge advocate for consideration and advice. The convening authority may not refer a specification under a charge to a general court-martial for trial unless he has been advised in writing by the staff judge advocate that—

(1) the specification alleges an offense under this chapter;

(2) the specification is warranted by the evidence indicated in the report of investigation under section 832 of this title (article 32) (if there is such a report); and

(3) a court-martial would have jurisdiction over the accused and the offense.

(b) The advice of the staff judge advocate under subsection (a) with respect to a specification under a charge shall include a written and signed statement by the staff judge advocate—

(1) expressing his conclusions with respect to each matter set forth in subsection (a); and

(2) recommending action that the convening authority take regarding the specification.

If the specification is referred for trial, the recommendation of the staff judge advocate shall accompany the specification.

(c) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence, may be made.

(Aug. 10, 1956, ch. 1041, 70A Stat. 49; Dec. 6, 1983, P.L. 98–209, § 4, 97 Stat. 1395.)

§ 835. Art. 35. Service of charges

The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person may, against his objection, be brought to trial, or be required to participate by himself or counsel in a session called by the military judge under section 839(a) of this title (article 39(a)), in a general court-martial case within a period of five days after the service of charges upon him, or in a special court-martial case within a period of three days after the service of charges upon him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 49; Oct. 24, 1968, P.L. 90–632, § 2(12), 82 Stat. 1337.)

SUBCHAPTER VII—TRIAL PROCEDURE

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§ 836. Art. 36. President may prescribe rules

(a) Pretrial, trial, and post-trial procedures, including modes of proof, for cases arising under this chapter triable in courts-martial, military commissions and other military tribunals, and procedures for courts of inquiry, may be prescribed by the President by regulations which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts, but which may not be contrary to or inconsistent with this chapter.

(b) All rules and regulations made under this article shall be uniform insofar as practicable.

(Aug. 10, 1956, ch. 1041, 70A Stat. 50; Nov. 9, 1979, P.L. 96–107, § 801(b), 93 Stat. 811; Nov. 5, 1990, P.L. 101–510, § 1301(4), 104 Stat. 1668.)

§ 837. Art. 37. Unlawfully influencing action of court

(a) No authority convening a general, special, or summary court-martial, nor any other commanding officer, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this chapter may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts. The foregoing provisions of the subsection shall not apply with respect to (1) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial, or (2) to statements and instructions given in open court by the military judge, president of a special court-martial, or counsel.

(b) In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part

for the purpose of determining whether a member of the armed forces is qualified to be advanced, in grade, or in determining the assignment or transfer of a member of the armed forces or in determining whether a member of the armed forces should be retained on active duty, no person subject to this chapter may, in preparing any such report (1) consider or evaluate the performance of duty of any such member as a member of a court-martial, or (2) give a less favorable rating or evaluation of any member of the armed forces because of the zeal with which such member, as counsel, represented any accused before a court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 50; Oct. 24, 1968, P.L. 90–632, § 2(13), 82 Stat. 1338.)

§ 838. Art. 38. Duties of trial counsel and defense counsel

(a) The trial counsel of a general or special court-martial shall prosecute in the name of the United States, and shall, under the direction of the court, prepare the record of the proceedings.

(b)(1) The accused has the right to be represented in his defense before a general or special court-martial or at an investigation under section 832 of this title (article 32) as provided in this subsection.

(2) The accused may be represented by civilian counsel if provided by him.

(3) The accused may be represented—

(A) by military counsel detailed under section 827 of this title (article 27); or

(B) by military counsel of his own selection if that counsel is reasonably available (as determined under regulations prescribed under paragraph (7)).

(4) If the accused is represented by civilian counsel, military counsel detailed or selected under paragraph (3) shall act as associate counsel unless excused at the request of the accused.

(5) Except as provided under paragraph (6), if the accused is represented by military counsel of his own selection under paragraph (3)(B), any military counsel detailed under paragraph (3)(A) shall be excused.

(6) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under section 827 of this title (article 27) to detail counsel, in his sole discretion—

(A) may detail additional military counsel as assistant defense counsel; and

(B) if the accused is represented by military counsel of his own selection under paragraph (3)(B), may approve a request from the accused that military counsel detailed under paragraph (3)(A) act as associate defense counsel.

(7) The Secretary concerned shall, by regulation, define "reasonably available" for the purpose of paragraph (3)(B) and establish procedures for determining whether the military counsel selected by an accused under that paragraph is reasonably available. Such regulations may not prescribe any limitation based on the reasonable availability of counsel solely on the grounds that the counsel selected by the accused is from an armed force other then the armed force of which the accused is a member. To the maximum extent practicable, such regulations shall establish uniform policies

among the armed forces while recognizing the differences in the circumstances and needs of the various armed forces. The Secretary concerned shall submit copies of regulations prescribed under this paragraph to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(c) In any court-martial proceeding resulting in a conviction, the defense counsel—

(1) may forward for attachment to the record of proceedings a brief of such matters as he determines should be considered in behalf of the accused on review (including any objection to the contents of the record which he considers appropriate);

(2) may assist the accused in the submission of any matter under section 860 of this title (article 60); and

(3) may take other action authorized by this chapter.

(d) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by section 827 of this title (article 27), perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(e) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by section 827 of this title (article 27), perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

(Aug. 10, 1956, ch. 1041, 70A Stat. 50; Oct. 24, 1968, P.L. 90–632, § 2(14), 82 Stat. 1338; Nov. 20, 1981, P.L. 97–81, § 4(b), 95 Stat. 1088; Dec. 6, 1983, P.L. 98–209, § 3(e), 97 Stat. 1394; Feb. 10, 1996, P.L. 104–106, § 1502(a)(1), 110 Stat. 502; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 839. Art. 39. Sessions

(a) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may, subject to section 835 of this title (article 35), call the court into session without the presence of the members for the purpose of—

(1) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(2) hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(3) if permitted by regulations of the Secretary concerned, holding the arraignment and receiving the pleas of the accused; and

(4) performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to section 836 of this title (article 36) and which does not require the presence of the members of the court.

These proceedings shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record. These proceedings may be conducted notwithstanding the number of members of the court and without regard to section 829 of this title (article 29).

(b) When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and, in cases in which a military judge has been detailed to the court, the military judge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Oct. 24, 1968, P.L. 90–632, § 2(15), 82 Stat 1338; Nov. 5, 1990, P.L. 101–510, § 541(a), 104 Stat. 1565.)

§ 840. Art. 40. Continuances

The military judge or a court-martial without a military judge may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Oct. 24, 1968, P.L. 90–632, § 2(16), 82 Stat. 1339.)

§ 841. Art. 41. Challenges

(a)(1) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge, or, if none, the court, shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(2) If exercise of a challenge for cause reduces the court below the minimum number of members required by section 816 of this title (article 16), all parties shall (notwithstanding section 829 of this title (article 29)) either exercise or waive any challenge for cause then apparent against the remaining members of the court before additional members are detailed to the court. However, peremptory challenges shall not be exercised at that time.

(b)(1) Each accused and the trial counsel are entitled initially to one peremptory challenge of members of the court. The military judge may not be challenged except for cause.

(2) If exercise of a peremptory challenge reduces the court below the minimum number of members required by section 816 of this title (article 16), the parties shall (notwithstanding section 829 of this title (article 29)) either exercise or waive any remaining peremptory challenge (not previously waived) against the remaining members of the court before additional members are detailed to the court.

(c) Whenever additional members are detailed to the court, and after any challenges for cause against such additional members are presented and decided, each accused and the trail counsel are entitled to one peremptory challenge against members not previously subject to peremptory challenge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Oct. 24, 1968, P.L. 90–632, § 2(17), 82 Stat. 1339; Nov. 5, 1990, P.L. 101–510, § 541(b), (c), and (d), 104 Stat. 1565.)

§ 842. Art. 42. Oaths

(a) Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant or associate defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The form of the oath, the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which these duties are to be performed or for a particular case, shall be as prescribed in regulations of the Secretary concerned. These regulations may provide that an oath to perform faithfully duties as a military judge, trial counsel, assistant trial counsel, defense counsel, or assistant defense counsel may be taken at any time by any judge advocate or associate or other person certified to be qualified or competent for the duty, and if such an oath is taken it need not again be taken at the time the judge advocate or other person is detailed to that duty.

(b) Each witness before a court-martial shall be examined on oath.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Oct. 24, 1968, P.L. 90–632, § 2(18), 82 Stat. 1339; Dec. 6, 1983, P.L. 98–209, § 2(e), 3(f), 97 Stat. 1393, 1395.)

§ 843. Art. 43. Statute of limitations

(a) A person charged with absence without leave or missing movement in time of war, or with any offense punishable by death, may be tried and punished at any time without limitation.

(b)(1) Except as otherwise provided in this section (article), a person charged with an offense is not liable to be tried by court-martial if the offense was committed more than five years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(2) A person charged with an offense is not liable to be punished under section 815 of this title (article 15) if the offense was committed more than two years before the imposition of punishment.

(c) Periods in which the accused is absent without authority or fleeing from justice shall be excluded in computing the period of limitation prescribed in this section (article).

(d) Periods in which the accused was absent from territory in which the United States has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this article.

(e) For an offense the trial of which in time of war is certified to the President by the Secretary concerned to be detrimental to the prosecution of the war or inimical to the national security, the period of limitation prescribed in this article is extended to six months after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

(f) When the United States is at war, the running of any statute of limitations applicable to any offense under this chapter—

(1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not;

(2) committed in connection with the acquisition, care, handling, custody, control, or disposition of any real or personal property of the United States; or

(3) committed in connection with the negotiation, procurement, award, performance, payment, interim financing, cancellation, or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or Government agency;

is suspended until three years after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

(g)(1) If charges or specifications are dismissed as defective or insufficient for any cause and the period prescribed by the applicable statute of limitations—

(A) has expired; or

(B) will expire within 180 days after the date of dismissal of the charges and specifications,

trial and punishment under new charges and specifications are not barred by the statute of limitations if the conditions specified in paragraph (2) are met.

(2) The conditions referred to in paragraph (1) are that the new charges and specifications must—

(A) be received by an officer exercising summary court-martial jurisdiction over the command within 180 days after the dismissal of the charges or specifications; and

(B) allege the same acts or omissions that were alleged in the dismissed charges or specifications (or allege acts or omissions that were included in the dismissed charges or specifications).

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Nov. 14, 1986, P.L. 99–661, § 805, 100 Stat. 3908.)

§ 844. Art. 44. Former jeopardy

(a) No person may, without his consent, be tried a second time for the same offense.

(b) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this article until the finding of guilty has become final after review of the case has been fully completed.

(c) A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial in the sense of this article.

(Aug. 10, 1956, ch. 1041, 70A Stat. 52.)

§ 845. Art. 45. Pleas of the accused

(a) If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty.

(b) A plea of guilty by the accused may not be received to any charge or specification alleging an offense for which the death penalty may be adjudged. With respect to any other charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge or by a court-martial without a military judge, a finding of guilty of the charge or specification may, if permitted by regulations of the Secretary concerned, be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 52; Oct. 24, 1968, P.L. 90–632, § 2(19), 82 Stat. 1339.)

§ 846. Art. 46. Opportunity to obtain witnesses and other evidence

The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe. Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue and shall run to any part of the United States, or the Territories, Commonwealths, and possessions.

(Aug. 10, 1956, ch. 1041, 70A Stat. 53.)

§ 847. Art. 47. Refusal to appear or testify

(a) Any person not subject to this chapter who—

(1) has been duly subpenaed to appear as a witness before a court-martial, military commission, court of inquiry, or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such a court, commission, or board;

(2) has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the courts of the United States; and

(3) willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpenaed to produce;

is guilty of an offense against the United States.

(b) Any person who commits an offense named in subsection (a) shall be tried on indictment or information in a United States district court or in a court of original criminal jurisdiction in any of the Territories, Commonwealths, or possessions of the United States, and jurisdiction is conferred upon those courts for that purpose. Upon conviction, such a person shall be fined or imprisoned, or both, at the court's discretion.

(c) The United States attorney or the officer prosecuting for the United States in any such court of original criminal jurisdiction shall, upon the certification of the facts to him by the military court, commission, court of inquiry, or board, file an information against and prosecute any person violating this article.

(d) The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses.

(Aug. 10, 1956, ch. 1041. 70A Stat. 53; Feb. 10, 1996, P.L. 104–106, § 1111, 110 Stat. 461.)

§ 848. Art. 48. Contempts

A court-martial, provost court, or military commission may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. The punishment may not exceed confinement for 30 days or a fine of $100, or both.

(Aug. 10, 1956, ch. 1041, 70A Stat. 53.)

§ 849. Art. 49. Depositions

(a) At any time after charges have been signed as provided in section 830 of this title (article 30), any party may take oral or written depositions unless the military judge or court-martial without a military judge hearing the case or, if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, such an authority may designate commissioned officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.

(b) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(c) Depositions may be taken before and authenticated by any military or civil officer authorized by the laws of the United States or by the laws of the place where the deposition is taken to administer oaths.

(d) A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence or, in the case of audiotape, videotape, or similar material, may be played in evidence before any military court or commission in any case not capital, or in any proceeding before a court of inquiry or military board, if it appears—

(1) that the witness resides or is beyond the State, Territory, Commonwealth, or District of Columbia in which the court, commission, or board is ordered to sit, or beyond 100 miles from the place of trial or hearing;

(2) that the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(3) that the present whereabouts of the witness is unknown.

(e) Subject to subsection (d), testimony by deposition may be presented by the defense in capital cases.

(f) Subject to subsection (d), a deposition may be read in evidence or, in the case of audiotape, videotape, or similar material, may be played in evidence in any case in which the death penalty is authorized but is not mandatory, whenever the convening au-

thority directs that the case be treated as not capital, and in such a case a sentence of death may not be adjudged by the court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 53; Oct. 24, 1968, P.L. 90–632, § 2(20), 82 Stat. 1340; Dec. 6, 1983, P.L. 98–209, § 6(b), 97 Stat. 1400.)

§ 850. Art. 50. Admissibility of records of courts of inquiry

(a) In any case not capital and not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial or military commission if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence.

(b) Such testimony may be read in evidence only by the defense in capital cases or cases extending to the dismissal of a commissioned officer.

(c) Such testimony may also be read in evidence before a court of inquiry or a military board.

(Aug. 10, 1956, ch. 1041, 70A Stat. 54.)

§ 850a. Art. 50a. Defense of lack of mental responsibility

(a) It is an affirmative defense in a trial by court-martial that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

(b) The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

(c) Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge, or the president of a court-martial without a military judge, shall instruct the members of the court as to the defense of lack of mental responsibility under this section and charge them to find the accused—

(1) guilty;

(2) not guilty; or

(3) not guilty only by reason of lack of mental responsibility.

(d) Subsection (c) does not apply to a court-martial composed of a military judge only. In the case of a court-martial composed of a military judge only, whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge shall find the accused—

(1) guilty;

(2) not guilty; or

(3) not guilty only by reason of lack of mental responsibility.

(e) Notwithstanding the provisions of section 852 of this title (article 52), the accused shall be found not guilty only by reason of lack of mental responsibility if—

(1) a majority of the members of the court-martial present at the time the vote is taken determines that the defense of lack of mental responsibility has been established; or

(2) in the case of a court-martial composed of a military judge only, the military judge determines that the defense of lack of mental responsibility has been established.

(Added P.L. 99–661, § 802(a), Nov. 14, 1986, 100 Stat. 3905.)

§ 851. Art. 51. Voting and rulings

(a) Voting by members of a general or special court-martial on the findings and on the sentence, and by members of a court-martial without a military judge upon questions of challenge, shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(b) The military judge and, except for questions of challenge, the president of a court-martial without a military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused, or by the president of a court-martial without a military judge upon any question of law other than a motion for a finding of not guilty, is final and constitutes the ruling of the court. However, the military judge or the president of a court-martial without a military judge may change his ruling at any time during trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in section 852 of this title (article 52), beginning with the junior in rank.

(c) Before a vote is taken on the findings, the military judge or the president of a court-martial without a military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them—

(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

(3) that, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) that the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the United States.

(d) Subsections (a), (b), and (c) do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial

shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

(Aug. 10, 1956, ch. 1041, 70A Stat. 54; Oct. 24, 1968, P.L. 90–632, § 2(21), 82 Stat. 1340.)

§ 852. Art. 52. Number of votes required

(a)(1) No person may be convicted of an offense for which the death penalty is made mandatory by law, except by the concurrence of all the members of the court-martial present at the time the vote is taken.

(2) No person may be convicted of any other offense, except as provided in section 845(b) of this title (article 45(b)) or by the concurrence of two-thirds of the members present at the time the vote is taken.

(b)(1) No person may be sentenced to suffer death, except by the concurrence of all the members of the court-martial present at the time the vote is taken and for an offense in this chapter expressly made punishable by death.

(2) No person may be sentenced to life imprisonment or to confinement for more than ten years, except by the concurrence of three-fourths of the members present at the time the vote is taken.

(3) All other sentences shall be determined by the concurrence of two-thirds of the members present at the time the vote is taken.

(c) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote, but a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

(Aug. 10, 1956, ch. 1041, 70A Stat. 55; Oct. 24, 1968, P.L. 90–632, § 2(22), 82 Stat. 1340.)

§ 853. Art. 53. Court to announce action

A court-martial shall announce its findings and sentence to the parties as soon as determined.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56.)

§ 854. Art. 54. Record of trial

(a) Each general court-martial shall keep a separate record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. In a court-martial consisting of only a military judge the record shall be authenticated by the court reporter under the same conditions which would impose such a duty on a member under this subsection.

(b) Each special and summary court-martial shall keep a separate record of the proceedings in each case, and the record shall be authenticated in the manner required by such regulations as the President may prescribe.

(c)(1) A complete record of the proceedings and testimony shall be prepared—

(A) in each general court-martial case in which the sentence adjudged includes death, a dismissal, a discharge, or (if the sentence adjudged does not include a discharge) any other punishment which exceeds that which may otherwise be adjudged by a special court-martial; and

(B) in each special court-martial case in which the sentence adjudged includes a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months.

(2) In all other court-martial cases, the record shall contain such matters as may be prescribed by regulations of the President.

(d) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56; Oct. 24, 1968, P.L. 90–632, § 2(23), 82 Stat. 1340; Dec. 6, 1983, P.L. 98–209, § 6(c), 97 Stat. 1400; P.L. 106–398, § 1[555(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–127.)

SUBCHAPTER VIII—SENTENCES

Sec.	Art.	
855.	55.	Cruel and unusual punishments prohibited.
856.	56.	Maximum limits.
856a.	56a.	Sentence of confinement for life without eligibility for parole.
857.	57.	Effective date of sentences.
857a.	57a.	Deferment of sentences.
858.	58.	Execution of confinement.
858a.	58a.	Sentences: reduction in enlisted grade upon approval.
858b.	58b.	Sentences: forfeiture of pay and allowances during confinement.

§ 855. Art. 55. Cruel and unusual punishments prohibited

Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by any court-martial or inflicted upon any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56.)

§ 856. Art. 56. Maximum limits

The punishment which a court-martial may direct for an offense may not exceed such limits as the President may prescribe for that offense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56.)

§ 856a. Art. 56a. Sentence of confinement for life without eligibility for parole [1]

(a) For any offense for which a sentence of confinement for life may be adjudged, a court-martial may adjudge a sentence of confinement for life without eligibility for parole.

(b) An accused who is sentenced to confinement for life without eligibility for parole shall be confined for the remainder of the accused's life unless—

(1) the sentence is set aside or otherwise modified as a result of—

(A) action taken by the convening authority, the Secretary concerned, or another person authorized to act under section 860 of this title (article 60); or

(B) any other action taken during post-trial procedure and review under any other provision of subchapter IX;

(2) the sentence is set aside or otherwise modified as a result of action taken by a Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court; or

(3) the accused is pardoned.

(Added P.L. 105–85, § 581(a)(1), Nov. 18, 1997, 111 Stat. 1759.)

§ 857. Art. 57. Effective date of sentences

(a)(1) Any forfeiture of pay or allowances or reduction in grade that is included in a sentence of a court-martial takes effect on the earlier of—

(A) the date that is 14 days after the date on which the sentence is adjudged; or

(B) the date on which the sentence is approved by the convening authority.

(2) On application by an accused, the convening authority may defer a forfeiture of pay or allowances or reduction in grade that would otherwise become effective under paragraph (1)(A) until the date on which the sentence is approved by the convening authority. Such a deferment may be rescinded at any time by the convening authority.

(3) A forfeiture of pay or allowances shall be applicable to pay and allowances accruing on and after the date on which the sentence takes effect.

(4) In this subsection, the term "convening authority", with respect to a sentence of a court-martial, means any person authorized to act on the sentence under section 860 of this title (article 60).

(b) Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement.

(c) All other sentences of courts-martial are effective on the date ordered executed.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56; Oct. 24, 1968, P.L. 90–632, § 2(24), 82 Stat. 1341; Dec. 6, 1983, P.L. 98–209, § 5(f), 97 Stat. 1400; Oct. 23, 1992, P.L. 102–484, § 1064, 106 Stat. 2506; Feb. 10, 1996, P.L. 104–106, § § 1121(a), 1123(a), 110 Stat. 462, 464.)

[1] Section 856(a) (article 56a) applies only with respect to an offense committed after November 18, 1997, as provided in section 581(b) of the National Defense Authorization Act for Fiscal Year 1998 (P.L. 105–85; 111 Stat. 1760).

§ 857a. Art. 57a. Deferment of sentences

(a) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under his jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may in his sole discretion defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

(b)(1) In any case in which a court-martial sentences a person referred to in paragraph (2) to confinement, the convening authority may defer the service of the sentence to confinement, without the consent of that person, until after the person has been permanently released to the armed forces by a State or foreign country referred to in that paragraph.

(2) Paragraph (1) applies to a person subject to this chapter who—

(A) while in the custody of a State or foreign country is temporarily returned by that State or foreign country to the armed forces for trial by court-martial; and

(B) after the court-martial, is returned to that State or foreign country under the authority of a mutual agreement or treaty, as the case may be.

(3) In this subsection, the term "State" includes the District of Columbia and any commonwealth, territory, or possession of the United States.

(c) In any case in which a court-martial sentences a person to confinement and the sentence to confinement has been ordered executed, but in which review of the case under section 867(a)(2) of this title (article 67(a)(2)) is pending, the Secretary concerned may defer further service of the sentence to confinement while that review is pending.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56; Oct. 24, 1968, P.L. 90–632, § 2(24), 82 Stat. 1341; Dec. 6, 1983, P.L. 98–209, § 5(f), 97 Stat. 1400; Oct. 23, 1992, P.L. 102–484, § 1064, 106 Stat. 2506; Feb. 10, 1996, P.L. 104–106, § 1123(a), 110 Stat. 463.)

§ 858. Art. 58. Execution of confinement

(a) Under such instructions as the Secretary concerned may prescribe, a sentence of confinement adjudged by a court-martial or other military tribunal, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the armed forces or in any penal or correctional institution under the control of the United States, or which the United States may be allowed to use. Persons so confined in a penal or correctional institution not under the control of one of the armed forces are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, Territory, District of Columbia, or place in which the institution is situated.

(b) The omission of the words "hard labor" from any sentence of a court-martial adjudging confinement does not deprive the authority executing that sentence of the power to require hard labor as a part of the punishment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 57.)

§ 858a. Art. 58a. Sentences: reduction in enlisted grade upon approval

(a) Unless otherwise provided in regulations to be prescribed by the Secretary concerned, a court-martial sentence of an enlisted member in a pay grade above E–1, as approved by the convening authority, that includes—

(1) a dishonorable or bad-conduct discharge;

(2) confinement; or

(3) hard labor without confinement;

reduces that member to pay grade E–1, effective on the date of that approval.

(b) If the sentence of a member who is reduced in pay grade under subsection (a) is set aside or disapproved, or, as finally approved, does not include any punishment named in subsection (a)(1), (2), or (3), the rights and privileges of which he was deprived because of that reduction shall be restored to him and he is entitled to the pay and allowances to which he would have been entitled, for the period the reduction was in effect, had he not been so reduced.

(Added P.L. 86–633, § 1(1), July 12, 1960, 74 Stat. 468.)

§ 858b. Art. 58b. Sentences: forfeiture of pay and allowances during confinement

(a)(1) A court-martial sentence described in paragraph (2) shall result in the forfeiture of pay, or of pay and allowances, due that member during any period of confinement or parole. The forfeiture pursuant to this section shall take effect on the date determined under section 857(a) of this title (article 57(a)) and may be deferred as provided in that section. The pay and allowances forfeited, in the case of a general court-martial, shall be all pay and allowances due that member during such period and, in the case of a special court-martial, shall be two-thirds of all pay due that member during such period.

(2) A sentence covered by this section is any sentence that includes—

(A) confinement for more than six months or death; or

(B) confinement for six months or less and a dishonorable or bad-conduct discharge or dismissal.

(b) In a case involving an accused who has dependents, the convening authority or other person acting under section 860 of this title (article 60) may waive any or all of the forfeitures of pay and allowances required by subsection (a) for a period not to exceed six months. Any amount of pay or allowances that, except for a waiver under this subsection, would be forfeited shall be paid, as the convening authority or other person taking action directs, to the dependents of the accused.

(c) If the sentence of a member who forfeits pay and allowances under subsection (a) is set aside or disapproved or, as finally ap-

proved, does not provide for a punishment referred to in subsection (a)(2), the member shall be paid the pay and allowances which the member would have been paid, except for the forfeiture, for the period during which the forfeiture was in effect.

(Added P.L. 104–106, § 1122(a)(1), Feb. 10, 1996, 110 Stat. 463; amended P.L. 104–201, § 1068(a), Sept. 23, 1996, 110 Stat. 2655; P.L. 105–85, § 1073(a)(9), Nov. 18, 1997, 111 Stat. 1900.)

SUBCHAPTER IX—POST-TRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL

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§ 859. Art. 59. Error of law; lesser included offense

(a) A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 57.)

§ 860. Art. 60. Action by the convening authority

(a) The findings and sentence of a court-martial shall be reported promptly to the convening authority after the announcement of the sentence.

(b)(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence. Any such submission shall be in writing. Except in a summary court-martial case, such a submission shall be made within 10 days after the accused has been given an authenticated record of trial and, if applicable, the recommendation of the staff judge advocate or legal officer under subsection (d). In a summary court-martial case, such a submission shall be made within seven days after the sentence is announced.

(2) If the accused shows that additional time is required for the accused to submit such matters, the convening authority or other person taking action under this section, for good cause, may extend the applicable period under paragraph (1) for not more than an additional 20 days.

(3) In a summary court-martial case, the accused shall be promptly provided a copy of the record of trial for use in preparing a submission authorized by paragraph (1).

(4) The accused may waive his right to make a submission to the convening authority under paragraph (1). Such a waiver must be made in writing and may not be revoked. For the purpose of subsection (c)(2), the time within which the accused may make a submission under this subsection shall be deemed to have expired upon the submission of such a waiver to the convening authority.

(c)(1) The authority under this section to modify the findings and sentence of a court-martial is a matter of command prerogative involving the sole discretion of the convening authority. Under regulations of the Secretary concerning, a commissioned officer commanding for the time being, a successor in command, or any person exercising general court-martial jurisdiction may act under this section in place of the convening authority.

(2) Action on the sentence of a court-martial shall be taken by the convening authority or by another person authorized to act under this section. Subject to regulations of the Secretary concerned, such action may be taken only after consideration of any matters submitted by the accused under subsection (b) or after the time for submitting such matters expires, whichever is earlier. The convening authority or other person taking such action, in his sole discretion, may approve, disapprove, commute, or suspend the sentence in whole or in part.

(3) Action on the findings of a court-martial by the convening authority or other person acting on the sentence is not required. However, such person, in his sole discretion, may—

(A) dismiss any charge or specification by setting aside a finding of guilty thereto; or

(B) change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification.

(d) Before acting under this section on any general court-martial case or any special court-martial case that includes a bad-conduct discharge, the convening authority or other person taking action under this section shall obtain and consider the written recommendation of his staff judge advocate or legal officer. The convening authority or other person taking action under this section shall refer the record of trial to his staff judge advocate or legal officer, and the staff judge advocate or legal officer shall use such record in the preparation of this recommendation. The recommendation of the staff judge advocate or legal officer shall include such matters as the President may prescribe by regulation and shall be served on the accused, who may submit any matter in response under subsection (b). Failure to object in the response to the recommendation or to any matter attached to the recommendation waives the right to object thereto.

(e)(1) The convening authority or other person taking action under this section, in his sole discretion, may order a proceeding in revision or a rehearing.

(2) A proceeding in revision may be ordered if there is an apparent error or omission in the record or if the record shows improper or inconsistent action by a court-martial with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused. In no case, however, may a proceeding in revision—

(A) reconsider a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty;

(B) reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some article of this chapter; or

(C) increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

(3) A rehearing may be ordered by the convening authority or other person taking action under this section if he disapproves the findings and sentence and states the reasons for disapproval of the findings. If such person disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges. A rehearing as to the findings may not be ordered where there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered if the convening authority or other person taking action under this subsection disapproves the sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 57; Dec. 6, 1983, P.L. 98–209, § 5(a), 97 Stat. 1395; Nov. 14, 1986, P.L. 99–661, § 806, 100 Stat. 3908; Feb. 10, 1996, P.L. 104–106, § 1132, 110 Stat. 464.)

§ 861. Art. 61. Waiver of withdrawal of appeal

(a) In each case subject to appellate review under section 866 or 869(a) of this title (article 66 or 69(a)), except a case in which the sentence as approved under section 860(c) of this title (article 60(c)) includes death, the accused may file with the convening authority a statement expressly waiving the right of the accused to such review. Such a waiver shall be signed by both the accused and by defense counsel and must be fileds within 10 days after the action under section 860(c) of this title (article 60(c)) is served on the accused or on defense counsel. The convening authority or other person taking such action, for good cause, may extend the period for such filing by not more 30 than days.

(b) Except in a case in which the sentence as approved under section 860(c) of this title (article 60(c)) includes death, the accused may withdraw an appeal at any time.

(c) A waiver of the right to appellate review or the withdrawal of an appeal under this section bars review under section 866 or 869(a) of this title (article 66 or 69(a)).

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Dec. 6, 1983, P.L. 98–209, § 5(b), 97 Stat. 1397.)

§ 862. Art. 62. Appeal by the United States

(a)(1) In a trial by court-martial in which a military judge presides and in which a punitive discharge may be adjudged, the United States may appeal the following (other than an order or rul-

ing that is, or that amounts to, a finding of not guilty with respect to the charge or specification):

(A) An order or ruling of the military judge which terminates the proceedings with respect to a charge or specification.

(B) An order or ruling which excludes evidence that is substantial proof of a fact material in the proceeding.

(C) An order or ruling which directs the disclosure of classified information.

(D) An order or ruling which imposes sanctions for nondisclosure of classified information.

(E) A refusal of the military judge to issue a protective order sought by the United States to prevent the disclosure of classified information.

(F) A refusal by the military judge to enforce an order described in subparagraph (E) that has previously been issued by appropriate authority.

(2) An appeal of an order or ruling may not be taken unless the trial counsel provides the military judge with written notice of appeal from the order or ruling within 72 hours of the order or ruling. Such notice shall include a certification by the trial counsel that the appeal is not taken for the purpose of delay and (if the order or ruling appealed is one which excludes evidence) that the evidence excluded is substantial proof of a fact material in the proceeding.

(3) An appeal under this section shall be diligently prosecuted by appellate Government counsel.

(b) An appeal under this section shall be forwarded by a means prescribed under regulations of the President directly to the Court of Criminal Appeals and shall, whenever practicable, have priority over all other proceedings before that court. In ruling on an appeal under this section, the Court of Criminal Appeals may act only with respect to matters of law, notwithstanding section 866(c) of this title (article 66(c)).

(c) Any period of delay resulting from an appeal under this section shall be excluded in deciding any issue regarding denial of a speedy trial unless an appropriate authority determines that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit.

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Dec. 6, 1983, P.L. 98–209, § 5(c), 97 Stat. 1398; Oct. 5, 1994, P.L. 103–337, § 924(c)(2), 108 Stat. 2831; Feb. 10, 1996, P.L. 104–106, § 1141(a), 110 Stat. 466.)

§ 863. Art. 63. Rehearings

Each rehearing under this chapter shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be approved, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory. If the sentence approved after the first court-martial was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to

the charges or specification upon which the pretrial agreement was based, or otherwise does not comply with the pretrial agreement, the approved sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Dec. 6, 1983, P.L. 98–209, § 5(d), 97 Stat. 1398; Oct. 23, 1992, P.L. 102–484, § 1065, 106 Stat. 2506.)

§ 864. Art. 64. Review by a judge advocate

(a) Each case in which there has been a finding of guilty that is not reviewed under section 866 or 869(a) of this title (article 66 or 69(a)) shall be reviewed by a judge advocate under regulations of the Secretary concerned. A judge advocate may not review a case under this subsection if he has acted in the same case as an accuser, investigating officer, member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense. The judge advocate's review shall be in writing and shall contain the following:

(1) Conclusions as to whether—

(A) the court had jurisdiction over the accused and the offense;

(B) the charge and specification stated an offense; and

(C) the sentence was within the limits prescribed as a matter of law.

(2) A response to each allegation of error made in writing by the accused.

(3) If the case is sent for action under subsection (b), a recommendation as to the appropriate action to be taken and an opinion as to whether corrective action is required as a matter of law.

(b) The record of trail and related documents in each case reviewed under subsection (a) shall be sent for action to the person exercising general court-martial jurisdiction over the accused at the time the court was convened (or to that person's successor in command) if—

(1) the judge advocate who reviewed the case recommends corrective action;

(2) the sentence approved under section 860(c) of this title (article 60(c)) extends to dismissal, a bad-conduct or dishonorable discharge, or confinement for more than six months; or

(3) such action is otherwise required by regulations of the Secretary concerned.

(c)(1) The person to whom the record of trial and related documents are sent under subsection (b) may—

(A) disapprove or approve the findings or sentence, in whole or in part;

(B) remit, commute, or suspend the sentence in whole or in part;

(C) except where the evidence was insufficient at the trial to support the findings, order a rehearing on the findings, on the sentence, or on both; or

(D) dismiss the charges.

(2) If a rehearing is ordered by the convening authority finds a rehearing impracticable, he shall dismiss the charges.

(3) If the opinion of the judge advocate in the judge advocate's review under subsection (a) is that corrective action is required as a matter of law and if the person required to take action under subsection (b) does not take action that is at least as favorable to the accused as that recommended by the judge advocate, the record of trial and action thereon shall be sent to the Judge Advocate General for review under section 869(b) of this title (article 69(b)).

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Dec. 6, 1983, P.L. 98–209, § 7(a), 97 Stat. 1401.)

§ 865. Art. 65. Disposition of records

(a) In a case subject to appellate review under section 866 or 869(a) of this title (article 66 or 69(a)) in which the right to such review is not waived, or an appeal is not withdrawn, under section 861 of this title (article 61), the record of trial and action thereon shall be transmitted to the Judge Advocate General for appropriate action.

(b) Except as otherwise required by this chapter, all other records of trial and related documents shall be transmitted and disposed of as the Secretary concerned may prescribe by regulation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 59; Dec. 8, 1967, P.L. 90–179, § 1(6), 81 Stat. 546; Oct. 24 1968, P.L. 90–632, § 2(26), 82 Stat. 1341; Dec. 12, 1980, P.L. 96–513, § 511(25), 94 Stat. 2922; Dec. 6, 1983, P.L. 98–209, § 6(d), 97 Stat. 1401.)

§ 866. Art. 66. Review by Court of Criminal Appeals

(a) Each Judge Advocate General shall establish a Court of Criminal Appeals which shall be composed of one or more panels, and each such panel shall be composed of not less than three appellate military judges. For the purpose of reviewing court-martial cases, the court may sit in panels or as a whole in accordance with rules prescribed under subsection (f). Any decision of a panel may be reconsidered by the court sitting as a whole in accordance with such rules. Appellate military judges who are assigned to a Court of Criminal Appeals may be commissioned officers or civilians, each of whom must be a member of a bar of a Federal court or of the highest court of a State. The Judge Advocate General shall designate as chief judge one of the appellate military judges of the Court of Criminal Appeals established by him. The chief judge shall determine on which panels of the court the appellate judges assigned to the court will serve and which military judge assigned to the court will act as the senior judge on each panel.

(b) The Judge Advocate General shall refer to a Court of Criminal Appeals the record in each case of trial by court-martial—

(1) in which the sentence, as approved, extends to death, dismissal of a commissioned officer, cadet, or midshipman, dishonorable or bad-conduct discharge, or confinement for one year or more; and

(2) except in the case of a sentence extending to death, the right to appellate review has not been waived or an appeal has not been withdrawn under section 861 of this title (article 61).

(c) In a case referred to it, the Court of Criminal Appeals may act only with respect to the findings and sentence as approved by the convening authority. It may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire

record, should be approved. In considering the record, it may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

(d) If the Court of Criminal Appeals sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(e) The Judge Advocate General shall, unless there is to be further action by the President, the Secretary concerned, the Court of Court of Appeals for the Armed Forces, or the Supreme Court, instruct the convening authority to take action in accordance with the decision of the Court of Criminal Appeals. If the Court of Criminal Appeals has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(f) The Judge Advocates General shall prescribe uniform rules of procedure for Courts of Criminal Appeals and shall meet periodically to formulate policies and procedure in regard to review of court-martial cases in the offices of the Judge Advocates General and by Courts of Criminal Appeals.

(g) No member of a Court of Criminal Appeals shall be required, or on his own initiative be permitted, to prepare, approve, disapprove, review, or submit, with respect to any other member of the same or another Court of Criminal Appeals, an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the armed forces, or in determining whether a member of the armed forces should be retained on active duty.

(h) No member of a Court of Criminal Appeals shall be eligible to review the record of any trial if such member served as investigating officer in the case or served as a member of the court-martial before which such trial was conducted, or served as military judge, trial or defense counsel, or reviewing officer of such trial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 59; Oct. 24, 1968, P.L. 90–632, § 2(27), 82 Stat. 1341; Dec. 6, 1983, P.L. 98–209, §§ 7(b), (c), 10(c)(1), 97 Stat. 1402, 1406; Oct. 5, 1994, P.L. 103–337, § 924(b)(2), (c)(1), (4)(A) 108 Stat. 2831, 2832; Feb. 10, 1996, P.L. 104–106, § 1153, 110 Stat. 468.)

§ 867. Art. 67. Review by the Court of Appeals for the Armed Forces

(a) The Court of Appeals for the Armed Forces shall review the record in—

(1) all cases in which the sentence, as affirmed by a Court of Criminal Appeals, extends to death;

(2) all cases reviewed by a Court of Criminal Appeals which the Judge Advocate General orders sent to the Court of Appeals for the Armed Forces for review; and

(3) all cases reviewed by a Court of Criminal Appeals in which, upon petition of the accused and on good cause shown, the Court of Appeals for the Armed Forces has granted a review.

(b) The accused may petition the Court of Appeals for the Armed Forces for review of a decision of a Court of Criminal Appeals within 60 days from the earlier of—

(1) the date on which the accused is notified of the decision of the Court of Criminal Appeals; or

(2) the date on which a copy of the decision of the Court of Criminal Appeals, after being served on appellate counsel of record for the accused (if any), is deposited in the United States mails for delivery by first-class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record.

The Court of Appeals for the Armed Forces shall act upon such a petition promptly in accordance with the rules of the court.

(c) In any case reviewed by it, the Court of Appeals for the Armed Forces may act only with respect to the findings and sentence as approved by the convening authority and as affirmed or set aside as incorrect in law by the Court of Criminal Appeals. In a case which the Judge Advocate General orders sent to the Court of Appeals for the Armed Forces, that action need be taken only with respect to the issues raised by him. In a case reviewed upon petition of the accused, that action need be taken only with respect to issues specified in the grant of review. The Court of Appeals for the Armed Forces shall take action only with respect to matters of law.

(d) If the Court of Appeals for the Armed Forces sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(e) After it has acted on a case, the Court of Appeals for the Armed Forces may direct the Judge Advocate General to return the record to the Court of Criminal Appeals for further review in accordance with the decision of the court. Otherwise, unless there is to be further action by the President or the Secretary concerned, the Judge Advocate General shall instruct the convening authority to take action in accordance with that decision. If the court has ordered a rehearing, but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(Aug. 10, 1956, ch. 1041, 70A Stat. 60; Aug. 14, 1964, P.L. 88–426, § 403(j), 78 Stat. 434; June 15, 1968, P.L. 90–340, § 1, 82 Stat. 178; Oct. 24, 1968, P.L. 90–632, § 2(28), 82 Stat. 1342; Dec. 23, 1980, P.L. 96–579, § 12(a), 94 Stat. 3369; Nov. 20, 1981, P.L. 97–81, § 5, 95 Stat. 1088; Oct. 12, 1982, P.L. 97–295, § 1(12), 96 Stat. 1289; Dec. 6, 1983, P.L. 98–209, §§ 7(d), 9(a), 10(c)(2), 13(d), 97 Stat. 1402, 1404, 1406, 1408; April 21, 1987, P.L. 100–26, § 7(a)(2), 101 Stat. 275; Sept. 29, 1988, P.L. 100–456, § 722, 102 Stat. 2002; Nov. 29, 1989, P.L. 101–189, § 1301(a), 103 Stat. 1569; Oct. 5, 1994, P.L. 103–337, § 924(c)(1), (2), (4)(B), 108 Stat. 2831, 2832.)

§ 867a. Art. 67a. Review by the Supreme Court

(a) Decisions of the United States Court of Appeals for the Armed Forces are subject to review by the Supreme Court by writ of certiorari as provided in section 1259 of title 28. The Supreme Court may not review by a writ of certiorari under this section any action of the Court of Appeals for the Armed Forces in refusing to grant a petition for review.

(b) The accused may petition the Supreme Court for a writ of certiorari without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915(a) of title 28.

(Added P.L. 101–189, § 1301(b), Nov. 29, 1989, 103 Stat. 1569 [formerly § 867(h)]; amended P.L. 103–337, § 924(c)(1), Oct. 5, 1994, 108 Stat. 2831.)

§ 868. Art. 68. Branch offices

The Secretary concerned may direct the Judge Advocate General to establish a branch office with any command. The branch office shall be under an Assistant Judge Advocate General who, with the consent of the Judge Advocate General, may establish a Court of Criminal Appeals with one or more panels. That Assistant Judge Advocate General and any Court of Criminal Appeals established by him may perform for that command under the general supervision of the Judge Advocate General, the respective duties which the Judge Advocate General and a Court of Criminal Appeals established by the Judge Advocate General would otherwise be required to perform as to all cases involving sentences not requiring approval by the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 61; Oct. 24, 1968, P.L. 90–632, § 2(29), 82 Stat. 1342; Oct. 5, 1994, P.L. 103–337, § 924(c)(2), 108 Stat. 2831.)

§ 869. Art. 69. Review in the office of the Judge Advocate General

(a) The record of trial in each general court-martial that is not otherwise reviewed under section 866 of this title (article 66) shall be examined in the office of the Judge Advocate General if there is a finding of guilty and the accused does not waive or withdraw his right to appellate review under section 861 of this title (article 61). If any part of the findings on sentence is found to be unsupported in law or if reassessment of the sentence is appropriate, the Judge Advocate General may modify or set aside the findings or sentence or both.

(b) The findings or sentence, or both, in a court-martial case not reviewed under subsection (a) or under section 866 of this title (article 66) may be modified or set aside, in whole or in part, by the Judge Advocate General on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence. If such a case is considered upon application of the accused, the application must be filed in the office of the Judge Advocate General by the accused on or before the last day of the two-year period beginning on the date the sentence is approved under section 860(c) of this title (article 60(c)), unless the accused establishes good cause for failure to file within that time.

(c) If the Judge Advocate General sets aside the findings or sentence, he may, except when the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If he sets aside the findings and sentence and does not order a rehearing, he shall order that the charges be dismissed. If the Judge Advocate General orders a rehearing but the convening authority finds a rehearing impractical, the convening authority shall dismiss the charges.

(d) A Court of Criminal Appeals may review, under section 866 of this title (article 66)—

(1) any court-martial case which (A) is subject to action by the Judge Advocate General under this section, and (B) is sent to the Court of Criminal Appeals by order of the Judge Advocate General; and

(2) any action taken by the Judge Advocate General under this section in such case.

(e) Notwithstanding section 866 of this title (article 66), in any case reviewed by a Court of Criminal Appeals under this section, the Court may take action only with respect to matters of law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 61; Oct. 24, 1968, P.L. 90–632, § 2(30), 82 Stat. 1342; Nov. 20, 1981, P.L. 97–81, § 6, 95 Stat. 1089; Dec. 6, 1983, P.L. 98–209, § 7(e), 97 Stat. 1402; Nov. 29, 1989, P.L. 101–189, § 1302(a), 103 Stat. 1576; Oct. 5, 1994, P.L. 103–337, § 924(c)(2), 108 Stat. 2831.)

§ 870. Art. 70. Appellate counsel

(a) The Judge Advocate General shall detail in his office one or more commissioned officers as appellate Government counsel, and one or more commissioned officers as appellate defense counsel, who are qualified under section 827(b)(1) of this title (article 27(b)(1)).

(b) Appellate Government counsel shall represent the United States before the Court of Criminal Appeals or the Court of Appeals for the Armed Forces when directed to do so by the Judge Advocate General. Appellate Government counsel may represent the United States before the Supreme Court in cases arising under this chapter when requested to do so by the Attorney General.

(c) Appellate defense counsel shall represent the accused before the Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court—

(1) when requested by the accused;

(2) when the United States is represented by counsel; or

(3) when the Judge Advocate General has sent the case to the Court of Appeals for the Armed Forces.

(d) The accused has the right to be represented before the Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court by civilian counsel if provided by him.

(e) Military appellate counsel shall also perform such other functions in connection with the review of court martial cases as the Judge Advocate General directs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 62; Oct. 24, 1968, P.L. 90–632, § 2(31), 82 Stat. 1342; Dec. 6, 1983, P.L. 98–209, § (10)(c)(3), 97 Stat. 1406; Oct. 5, 1994, P.L. 103–337, § 924(c)(1), (2), 108 Stat. 2831.)

§ 871. Art. 71. Execution of sentence; suspension of sentence

(a) If the sentence of the court-martial extends to death, that part of the sentence providing for death may not be executed until approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as he sees fit. That part of the sentence providing for death may not be suspended.

(b) If in the case of a commissioned officer, cadet, or midshipman, the sentence of a court-martial extends to dismissal, the

part of the sentence providing for dismissal may not be executed until approved by the Secretary concerned or such Under Secretary or Assistant Secretary as may be designated by the Secretary concerned. In such a case, the Secretary, Under Secretary, or Assistant Secretary, as the case may be, may commute, remit, or suspend the sentence, or any part of the sentence, as he sees fit. In time of war or national emergency he may commute a sentence of dismissal to reduction to any enlisted grade. A person so reduced may be required to serve for the duration of the war or emergency and six months thereafter.

(c)(1) If a sentence extends to death, dismissal, or a dishonorable or bad-conduct discharge and if the right of the accused to appellate review is not waived, and an appeal is not withdrawn, under section 861 of this title (article 61), that part of the sentence extending to death, dismissal, or a dishonorable or bad-conduct discharge may not be executed until there is a final judgment as to the legality of the proceedings (and with respect to death or dismissal, approval under subsection (a) or (b), as appropriate). A judgment as to legality of the proceedings is final in such cases when review is completed by a Court of Criminal Appeals and—

(A) the time for the accused to file a petition for review by the Court of Appeals for the Armed Forces has expired and the accused has not filed a timely petition for such review and the case is not otherwise under review by that Court;

(B) such a petition is rejected by the Court of Appeals for the Armed Forces; or

(C) review is completed in accordance with the judgment of the Court of Appeals for the Armed Forces and—

(i) a petition for a writ of certiorari is not filed within the time limits prescribed by the Supreme Court;

(ii) such a petition is rejected by the Supreme Court; or

(iii) review is otherwise completed in accordance with the judgment of the Supreme Court.

(2) If a sentence extends to dismissal or a dishonorable or bad-conduct discharge and if the right of the accused to appellate review is waived, or an appeal is withdrawn, under section 861 of this title (article 61), that part of the sentence extending to dismissal or a bad-conduct or dishonorable discharge may not be executed until review of the case by a judge advocate (and any action on that review) under section 864 of this title (article 64) is completed. Any other part of a court-martial sentence may be ordered executed by the convening authority or other person acting on the case under section 860 of this title (article 60) when approved by him under that section.

(d) The convening authority or other person acting on the case under section 860 of this title (article 60) may suspend the execution of any sentence or part thereof, except a death sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 62; Oct. 24, 1968, P.L. 90–632, § 2(32), 82 Stat. 1342; Dec. 6, 1983, P.L. 98–209, § 5(e), 97 Stat. 1399; Oct. 5, 1994, P.L. 103–337, § 924(c)(1), (2), 108 Stat. 2831.)

§ 872. Art. 72. Vacation of suspension

(a) Before the vacation of the suspension of a special court-martial sentence which as approved includes a bad-conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by counsel if he so desires.

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the officer exercising general court-martial jurisdiction over the probationer. If he vacates the suspension, any unexecuted part of the sentence, except a dismissal, shall be executed, subject to applicable restrictions in section 871 (c) of this title (article 71(c)). The vacation of the suspension of a dismissal is not effective until approved by the Secretary concerned.

(c) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63.)

§ 873. Art. 73. Petition for a new trial

At any time within two years after approval by the convening authority of a court-martial sentence, the accused may petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court. If the accused's case is pending before a Court of Criminal Appeals or before the Court of Appeals for the Armed Forces, the Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise the Judge Advocate General shall act upon the petition.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63; Oct. 24, 1968, P.L. 90–632, § 2(33), 82 Stat. 1342; Oct. 5, 1994, P.L. 103–337, § 924(c)(1), (2), 108 Stat. 2831.)

§ 874. Art. 74. Remission and suspension

(a) The Secretary concerned and, when designated by him, any Under Secretary, Assistant Secretary, Judge Advocate General, or commanding officer may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures other than a sentence approved by the President. However, in the case of a sentence of confinement for life without eligibility for parole[2], after the sentence is ordered executed, the authority of the Secretary concerned under the preceding sentence (1) may not be delegated, and (2) may be exercised only after the service of a period of confinement of not less than 20 years.

(b) The Secretary concerned may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63; P.L. 106–398, § 1[553(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–125.)

[2] The second sentence of subsection (a) applies only with respect to a sentence of confinement for life without eligibility for parole that is adjudged for an offense committed after October 29, 2000, pursuant to section 553(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654A–125).

§ 875. Art. 75. Restoration

(a) Under such regulations as the President may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon the new trial or rehearing.

(b) If a previously executed sentence of dishonorable or bad-conduct discharge is not imposed on a new trial, the Secretary concerned shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the Secretary concerned shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the President alone to such commissioned grade and with such rank as in the opinion of the President that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63.)

§ 876. Art. 76. Finality of proceedings, findings, and sentences

The appellate review of records of trial provided by this chapter, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this chapter, and all dismissals and discharges carried into execution under sentences by courts-martial following approval, review, or affirmation as required by this chapter, are final and conclusive. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the United States, subject only to action upon a petition for a new trial as provided in section 873 of this title (article 73) and to action by the Secretary concerned as provided in section 874 of this title (article 74) and the authority of the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 64.)

§ 876a. Art. 76a. Leave required to be taken pending review of certain court-martial convictions

Under regulations prescribed by the Secretary concerned, an accused who has been sentenced by a court-martial may be required to take leave pending completion of action under this subchapter if the sentence, as approved under section 860 of this title (article 60), includes an unsuspended dismissal or an unsuspended dishonorable or bad-conduct discharge. The accused may be required to begin such leave on the date on which the sentence is approved under section 860 of this title (article 60) or at any time

after such date, and such leave may be continued until the date on which action under this subchapter is completed or may be terminated at any earlier time.

(Added P.L. 97–81, § 2(c)(1), Nov. 20, 1981, 95 Stat. 1087; amended Dec. 6, 1983, P.L. 98–209, § 5(g), 97 Stat. 1400.)

§ 876b. Art. 76b. Lack of mental capacity or mental responsibility: commitment of accused for examination and treatment

(a) PERSONS INCOMPETENT TO STAND TRIAL.—(1) In the case of a person determined under this chapter to be presently suffering from a mental disease or defect rendering the person mentally incompetent to the extent that the person is unable to understand the nature of the proceedings against that person or to conduct or cooperate intelligently in the defense of the case, the general court-martial convening authority for that person shall commit the person to the custody of the Attorney General.

(2) The Attorney General shall take action in accordance with section 4241(d) of title 18.

(3) If at the end of the period for hospitalization provided for in section 4241(d) of title 18, it is determined that the committed person's mental condition has not so improved as to permit the trial to proceed, action shall be taken in accordance with section 4246 of such title.

(4)(A) When the director of a facility in which a person is hospitalized pursuant to paragraph (2) determines that the person has recovered to such an extent that the person is able to understand the nature of the proceedings against the person and to conduct or cooperate intelligently in the defense of the case, the director shall promptly transmit a notification of that determination to the Attorney General and to the general court-martial convening authority for the person. The director shall send a copy of the notification to the person's counsel.

(B) Upon receipt of a notification, the general court-martial convening authority shall promptly take custody of the person unless the person covered by the notification is no longer subject to this chapter. If the person is no longer subject to this chapter, the Attorney General shall take any action within the authority of the Attorney General that the Attorney General considers appropriate regarding the person.

(C) The director of the facility may retain custody of the person for not more than 30 days after transmitting the notifications required by subparagraph (A).

(5) In the application of section 4246 of title 18 to a case under this subsection, references to the court that ordered the commitment of a person, and to the clerk of such court, shall be deemed to refer to the general court-martial convening authority for that person. However, if the person is no longer subject to this chapter at a time relevant to the application of such section to the person, the United States district court for the district where the person is hospitalized or otherwise may be found shall be considered as the court that ordered the commitment of the person.

(b) PERSONS FOUND NOT GUILTY BY REASON OF LACK OF MENTAL RESPONSIBILITY.—(1) If a person is found by a court-martial

not guilty only by reason of lack of mental responsibility, the person shall be committed to a suitable facility until the person is eligible for release in accordance with this section.

(2) The court-martial shall conduct a hearing on the mental condition in accordance with subsection (c) of section 4243 of title 18. Subsections (b) and (d) of that section shall apply with respect to the hearing.

(3) A report of the results of the hearing shall be made to the general court-martial convening authority for the person.

(4) If the court-martial fails to find by the standard specified in subsection (d) of section 4243 of title 18 that the person's release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect—

(A) the general court-martial convening authority may commit the person to the custody of the Attorney General; and

(B) the Attorney General shall take action in accordance with subsection (e) of section 4243 of title 18.

(5) Subsections (f), (g), and (h) of section 4243 of title 18 shall apply in the case of a person hospitalized pursuant to paragraph (4)(B), except that the United States district court for the district where the person is hospitalized shall be considered as the court that ordered the person's commitment.

(c) GENERAL PROVISIONS.—(1) Except as otherwise provided in this subsection and subsection (d)(1), the provisions of section 4247 of title 18 apply in the administration of this section.

(2) In the application of section 4247(d) of title 18 to hearings conducted by a court-martial under this section or by (or by order of) a general court-martial convening authority under this section, the reference in that section to section 3006A of such title does not apply.

(d) APPLICABILITY.—(1) The provisions of chapter 313 of title 18 referred to in this section apply according to the provisions of this section notwithstanding section 4247(j) of title 18.

(2) If the status of a person as described in section 802 of this title (article 2) terminates while the person is, pursuant to this section, in the custody of the Attorney General, hospitalized, or on conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment, the provisions of this section establishing requirements and procedures regarding a person no longer subject to this chapter shall continue to apply to that person notwithstanding the change of status.

(Added P.L. 104–106, § 1133(a)(1), Feb. 10, 1996, 110 Stat. 464.)

SUBCHAPTER X—PUNITIVE ARTICLES

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§ 877. Art. 77. Principals

Any person punishable under this chapter who—

(1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission; or

(2) causes an act to be done which if directly performed by him would be punishable by this chapter;

is a principal.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

§ 878. Art. 78. Accessory after the fact

Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

§ 879. Art. 79. Conviction of lesser included offense

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

§ 880. Art. 80. Attempts

(a) An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

(b) Any person subject to this chapter who attempts to commit any offense punishable by this chapter shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(c) Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

§ 881. Art. 81. Conspiracy

Any person subject to this chapter who conspires with any other person to commit an offense under this chapter shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 66.)

§ 882. Art. 82. Solicitation

(a) Any person subject to this chapter who solicits or advises another or others to desert in violation of section 885 of this title (article 85) or mutiny in violation of section 894 of this title (article 94) shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of section 899 of this title (article 99) or sedition in violation of section 894 of this title (article 94) shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 66.)

§ 883. Art. 83. Fraudulent enlistment, appointment, or separation

Any person who—

(1) procures his own enlistment or appointment in the armed forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) procures his own separation from the armed forces by knowingly false representation or deliberate concealment as to his eligibility for that separation;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 66.)

§ 884. Art. 84. Unlawful enlistment, appointment, or separation

Any person subject to this chapter who effects an enlistment or appointment in or a separation from the armed forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 66.)

§ 885. Art. 85. Desertion

(a) Any member of the armed forces who—

(1) without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently;

(2) quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact that he has not been regularly separated, or enters any foreign armed service except when authorized by the United States;

is guilty of desertion.

(b) Any commissioned officer of the armed forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(c) Any person found guilty of desertion or attempt to desert shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the desertion or attempt to desert occurs at any other time, by such punishment, other than death, as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

§ 886. Art. 86. Absence without leave

Any member of the armed forces who, without authority—

(1) fails to go to his appointed place of duty at the time prescribed;

(2) goes from that place; or

(3) absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

§ 887. Art. 87. Missing movement

Any person subject to this chapter who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a courtmartial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

§ 888. Art. 88. Contempt toward officials

Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of Transportation, or the Governor or legislature of any State, Territory, Commonwealth, or possession in which he is on duty or present shall be punished as a court-martial may direct

(Aug. 10, 1956, ch. 1041, 70A Stat. 67; Dec. 12, 1980, P.L. 96–513, § 511(25), 94 Stat. 2922.)

§ 889. Art. 89. Disrespect toward superior commissioned officer

Any person subject to this chapter who behaves with disrespect toward his superior commissioned officer shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

§ 890. Art. 90. Assaulting or willfully disobeying superior commissioned officer

Any person subject to this chapter who—

(1) strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or

(2) willfully disobeys a lawful command of his superior commissioned officer;

shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, and if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

§ 891. Art. 91. Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer

Any warrant officer or enlisted member who—

(1) strikes or assaults a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;

(2) willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or

(3) treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer,

or petty officer, while that officer is in the execution of his office;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

§ 892. Art. 92. Failure to obey order or regulation

Any person subject to this chapter who—

(1) violates or fails to obey any lawful general order or regulation;

(2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or

(3) is derelict in the performance of his duties;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

§ 893. Art. 93. Cruelty and maltreatment

Any person subject to this chapter who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

§ 894. Art. 94. Mutiny or sedition

(a) Any person subject to this chapter who—

(1) with intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

(2) with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;

(3) fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(b) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished by death or such other punishment as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

§ 895. Art. 95. Resistance, flight, breach of arrest, and escape

Any person subject to this chapter who—

(1) resists apprehension;

(2) flees from apprehension;

(3) breaks arrest; or

(4) escapes from custody or confinement;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69; Feb. 10, 1996, P.L. 104–106, § 1112(a), 110 Stat. 461.)

§ 896. Art. 96. Releasing prisoner without proper authority

Any person subject to this chapter who, without proper authority, releases any prisoner committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

§ 897. Art. 97. Unlawful detention

Any person subject to this chapter who, except as provided by law, apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

§ 898. Art. 98. Noncompliance with procedural rules

Any person subject to this chapter who—

(1) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this chapter; or

(2) knowingly and intentionally fails to enforce or comply with any provision of this chapter regulating the proceedings before, during, or after trial of an accused;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

§ 899. Art. 99. Misbehavior before the enemy

Any member of the armed forces who before or in the presence of the enemy—

(1) runs away;

(2) shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend;

(3) through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;

(4) casts away his arms or ammunition;

(5) is guilty of cowardly conduct;

(6) quits his place of duty to plunder or pillage;

(7) causes false alarms in any command, unit, or place under control of the armed forces;

(8) willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty so to encounter, engage, capture, or destroy; or

(9) does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies when engaged in battle;

shall be punished by death or such other punishment as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

§ 900. Art. 100. Subordinate compelling surrender

Any person subject to this chapter who compels or attempts to compel the commander of any place, vessel, aircraft, or other military property, or of any body of members of the armed forces, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished by death or such other punishment as a court-martial may direct.

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

§ 901. Art. 101. Improper use of countersign

Any person subject to this chapter who in time of war discloses the parole or countersign to any person not entitled to receive it or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished by death or such other punishment as a court-martial may direct.

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

§ 902. Art. 102. Forcing a safeguard

Any person subject to this chapter who forces a safeguard shall suffer death or such other punishment as a court-martial may direct.

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

§ 903. Art. 103. Captured or abandoned property

(a) All persons subject to this chapter shall secure all public property taken from the enemy for the service of the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) Any person subject to this chapter who—

(1) fails to carry out the duties prescribed in subsection (a);

(2) buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or

(3) engages in looting or pillaging;

shall be punished as a court-martial may direct.

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

§ 904. Art. 104. Aiding the enemy

Any person who—

(1) aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or

(2) without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly;

shall suffer death or such other punishment as a court-martial or military commission may direct.

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

§ 905. Art. 105. Misconduct as prisoner

Any person subject to this chapter who, while in the hands of the enemy in time of war—

(1) for the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) while in a position of authority over such persons maltreats them without justifiable cause;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

§ 906. Art. 106. Spies

Any person who in time of war is found lurking as a spy or acting as a spy in or about any place, vessel, or aircraft, within the control or jurisdiction of any of the armed forces, or in or about any shipyard, any manufacturing or industrial plant, or any other place or institution engaged in work in aid of the prosecution of the war by the United States, or elsewhere, shall be tried by a general court-martial or by a military commission and on conviction shall be punished by death.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

§ 906a. Art. 106a. Espionage

(a)(1) Any person subject to this chapter who, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any entity described in paragraph (2), either directly or indirectly, anything described in paragraph (3) shall be punished as a court-martial may direct, except that if the accused is found guilty of an offense that directly concerns (A) nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large scale attack, (B) war plans, (C) communications intelligence or cryptographic information, or (D) any other major weapons system or major element of defense strategy, the accused shall be punished by death or such other punishment as a court-martial may direct.

(2) An entity referred to in paragraph (1) is—

(A) a foreign government;

(B) a faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States; or

(C) a representative, officer, agent, employee, subject, or citizen of such a government, faction, party, or force.

(3) A thing referred to in paragraph (1) is a document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense.

(b)(1) No person may be sentenced by court-martial to suffer death for an offense under this section (article) unless—

(A) the members of the court-martial unanimously find at least one of the aggravating factors set out in subsection (c); and

(B) the members unanimously determine that any extenuating or mitigating circumstances are substantially outweighed by any aggravating circumstances, including the aggravating factors set out in subsection (c).

(2) Findings under this subsection may be based on—

(A) evidence introduced on the issue of guilt or innocence;

(B) evidence introduced during the sentencing proceeding; or

(C) all such evidence.

(3) The accused shall be given broad latitude to present matters in extenuation and mitigation.

(c) A sentence of death may be adjudged by a court-martial for an offense under this section (article) only if the members unanimously find, beyond a reasonable doubt, one or more of the following aggravating factors:

(1) The accused has been convicted of another offense involving espionage or treason for which either a sentence of death or imprisonment for life was authorized by statute.

(2) In the commission of the offense, the accused knowingly created a grave risk of substantial damage to the national security.

(3) In the commission of the offense, the accused knowingly created a grave risk of death to another person.

(4) Any other factor that may be prescribed by the President by regulations under section 836 of this title (article 36).

(Added P.L. 99–145, § 534(a), Nov. 8, 1985, 99 Stat. 634.)

§ 907. Art. 107. False official statements

Any person subject to this chapter who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

§ 908. Art. 108. Military property of United States—Loss, damage, destruction, or wrongful disposition

Any person subject to this chapter who, without proper authority—

(1) sells or otherwise disposes of;

(2) willfully or through neglect damages, destroys, or loses; or

(3) willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of;

any military property of the United States, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

§ 909. Art. 109. Property other than military property of United States—Waste, spoilage, or destruction

Any person subject to this chapter who willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

§ 910. Art. 110. Improper hazarding of vessel

(a) Any person subject to this chapter who willfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces shall suffer death or such other punishment as a court-martial may direct.

(b) Any person subject to this chapter who negligently hazards or suffers to be hazarded any vessel of the armed forces shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

§ 911. Art. 111. Drunken or reckless operation of a vehicle, aircraft, or vessel

Any person subject to this chapter who—

(1) operates or physically controls any vehicle, aircraft, or vessel in a reckless or wanton manner or while impaired by a substance described in section 912a(b) of this title (article 112a(b)), or

(2) operates or is in actual physical control of any vehicle, aircraft, or vessel while drunk or when the alcohol concentration in the person's blood or breath is 0.10 grams or more of alcohol per 100 milliliters of blood or 0.10 grams or more of alcohol per 210 liters of breath, as shown by chemical analysis,

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72; Oct. 27, 1986, P.L. 99–570, § 3055, 100 Stat. 3207–76; Oct. 23, 1992, P.L. 102–484, § 1066(a), 106 Stat. 2506; Nov. 30, 1993, P.L. 103–160, § 576(a), 107 Stat. 1677.)

§ 912. Art. 112. Drunk on duty

Any person subject to this chapter other than a sentinel or look-out, who is found drunk on duty, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

§ 912a. Art. 112a. Wrongful use, possession, etc., of controlled substances

(a) Any person subject to this chapter who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces a substance described in subsection (b) shall be punished as a court-martial may direct.[3]

[3] Section 1248 of the National Defense Authorization Act for Fiscal Years 1988 and 1989 (P.L. 100–110) provides:

Continued

(b) The substances referred to in subsection (a) are the following:

(1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or derivative or any such substance.

(2) Any substance not specified in clause (1) that is listed on a schedule of controlled substances prescribed by the President for the purposes of this article.

(3) Any other substance not specified in clause (1) or contained on a list prescribed by the President under clause (2) that is listed in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

(Added P.L. 98–209, § 8, Dec. 6. 1983, 97 Stat. 1403.)

§ 913. Art. 113. Misbehavior of sentinel

Any sentinel or look-out who is found drunk or sleeping upon his post, or leaves it before he is regularly relieved, shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the offense is committed at any other time, by such punishment other than death as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

§ 914. Art. 114. Dueling

Any person subject to this chapter who fights or promotes, or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the facts promptly to the proper authority, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

SEC. 1248. PROCEDURES FOR FORENSIC EXAMINATION OF CERTAIN PHYSIOLOGICAL EVIDENCE

(a) ESTABLISHMENT OF PROCEDURES.—The Secretary of Defense shall establish procedures to ensure that whenever, in connection with a criminal investigation conducted by or for a military department, a physiological specimen is obtained from a person for the purpose of determining whether that person has used a controlled substance—

(1) the specimen is in a condition that is suitable for forensic examination when delivered to a forensic laboratory; and

(2) the investigative agency that submits the specimen to the laboratory receives a written statement of the results of the forensic examination from the laboratory within such period as is necessary to use such results in a court-martial or other criminal proceeding resulting from the investigation.

(b) TRANSPORTATION OF SPECIMENS.—The procedures prescribed under subsection (a)—

(1) shall ensure that physiological specimens are preserved and transported in accordance with valid medical and forensic practices; and

(2) insofar as practicable, shall require transportation of the specimen to an appropriate laboratory by the most expeditious means necessary to carry out the requirement in subsection (a)(1).

(c) TESTS FOR USE OF LSD.—Procedures established under subsection (a) shall ensure that whenever the controlled substance with respect to which a physiological specimen is to be examined is lysergic acid diethylamide (LSD), the specimen is submitted to a forensic laboratory that is capable of determining with a reasonable degree of scientific certainty, on the basis of the examination of that specimen, whether the person providing the specimen has used lysergic acid diethylamide (LSD).

(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as providing a basis, that is not otherwise available in law, for a defense to a charge or a motion for exclusion of evidence or other appropriate relief in any criminal or administrative proceeding.

(e) CONTROLLED SUBSTANCES COVERED.—For purposes of this section, a controlled substance is a substance described in section 912a(b) of title 10, United States Code.

(f) REPORT.—[Omitted].

§ 915. Art. 115. Malingering

Any person subject to this chapter who for the purpose of avoiding work, duty, or service—

(1) feigns illness, physical disablement, mental lapse or derangement; or

(2) intentionally inflicts self-injury;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

§ 916. Art. 116. Riot or breach of peace

Any person subject to this chapter who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

§ 917. Art. 117. Provoking speeches or gestures

Any person subject to this chapter who uses provoking or reproachful words or gestures towards any other person subject to this chapter shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

§ 918. Art. 118. Murder

Any person subject to this chapter who, without justification or excuse, unlawfully kills a human being, when he—

(1) has a premeditated design to kill;

(2) intends to kill or inflict great bodily harm;

(3) is engaged in an act which is inherently dangerous to another and evinces a wanton disregard of human life; or

(4) is engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, robbery, or aggravated arson;

is guilty of murder, and shall suffer such punishment as a court-martial may direct, except that if found guilty under clause (1) or (4), he shall suffer death or imprisonment for life as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72; Oct. 23, 1992, P.L. 102–484, § 1066(b), 106 Stat. 2506.)

§ 919. Art. 119. Manslaughter

(a) Any person subject to this chapter who, with an intent to kill or inflict great bodily harm, unlawfully kills a human being in the heat of sudden passion caused by adequate provocation is guilty of voluntary manslaughter and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who, without an intent to kill or inflict great bodily harm, unlawfully kills a human being—

(1) by culpable negligence; or

(2) while perpetrating or attempting to perpetrate an offense, other than those named in clause (4) of section 918 of this title (article 118), directly affecting the person;

is guilty of involuntary manslaughter and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73.)

§ 920. Art. 120. Rape and carnal knowledge

(a) Any person subject to this chapter who commits an act of sexual intercourse, by force and without consent, is guilty of rape and shall be punished by death or such other punishment as a court-martial may direct.

(b) Any person subject to this chapter who, under circumstances not amounting to rape, commits an act of sexual intercourse with a person—

(1) who is not that person's spouse; and

(2) who has not attained the age of sixteen years;

is guilty of carnal knowledge and shall be punished as a court-martial may direct.

(c) Penetration, however slight, is sufficient to complete either of these offenses.

(d)(1) In a prosecution under subsection (b), it is an affirmative defense that—

(A) the person with whom the accused committed the act of sexual intercourse had at the time of the alleged offense attained the age of twelve years; and

(B) the accused reasonably believed that that person had at the time of the alleged offense attained the age of sixteen years.

(2) The accused has the burden of proving a defense under paragraph (1) by a preponderance of the evidence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73; Oct. 23, 1992, P.L. 102–484, § 1065(c), 106 Stat. 2506; Feb. 10, 1996, P.L. 104–106, § 1113, 110 Stat. 462.)

§ 921. Art. 121. Larceny and wrongful appropriation

(a) Any person subject to this chapter who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind—

(1) with intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, steals that property and is guilty of larceny; or

(2) with intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, is guilty of wrongful appropriation.

(b) Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73.)

§ 922. Art. 122. Robbery

Any person subject to this chapter who with intent to steal takes anything of value from the person or in the presence of another, against his will, by means of force or violence or fear of immediate or future injury to his person or property or to the person or property of a relative or member of his family or of anyone in his company at the time of the robbery, is guilty of robbery and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73.)

§ 923. Art. 123. Forgery

Any person subject to this chapter who, with intent to defraud—

(1) falsely makes or alters any signature to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or

(2) utters, offers, issues, or transfers such a writing, known by him to be so made or altered;

is guilty of forgery and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

§ 923a. Art. 123a. Making, drawing, or uttering check, draft, or order without sufficient funds

Any person subject to this chapter who—

(1) for the procurement of any article or thing of value, with intent to defraud; or

(2) for the payment of any past due obligation, or for any other purpose, with intent to deceive;

makes, draws, utters, or delivers any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time that the maker or drawer has not or will not have sufficient funds in, or credit with, the bank or other depository for the payment of that check, draft, or order in full upon its presentment, shall be punished as a court-martial may direct. The making, drawing, uttering, or delivering by a maker or drawer of a check, draft, or order, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in the drawee's possession or control, is prima facie evidence of his intent to defraud or deceive and of his knowledge of insufficient funds in, or credit with, that bank or other depository, unless the maker or drawer pays the holder the amount due within five days after receiving notice, orally or in writing, that the check, draft, or order was not paid on presentment. In this section, the word "credit" means an arrangement or understanding, express or implied, with the bank or other depository for the payment of that check, draft, or order.

(Added P.L. 87–385, § 1(1), Oct. 4, 1961, 75 Stat. 814.)

§ 924. Art. 124. Maiming

Any person subject to this chapter who, with intent to injure, disfigure, or disable, inflicts upon the person of another an injury which—

(1) seriously disfigures his person by any mutilation thereof;

(2) destroys or disables any member or organ of his body; or

(3) seriously diminishes his physical vigor by the injury of any member or organ;

is guilty of maiming and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

§ 925. Art. 125. Sodomy

(a) Any person subject to this chapter who engages in unnatural carnal copulation with another person of the same or opposite sex or with an animal is guilty of sodomy. Penetration, however slight, is sufficient to complete the offense.

(b) Any person found guilty of sodomy shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

§ 926. Art. 126. Arson

(a) Any person subject to this chapter who willfully and maliciously burns or sets on fire an inhabited dwelling, or any other structure, movable or immovable, wherein to the knowledge of the offender there is at the time a human being, is guilty of aggravated arson and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who willfully and maliciously burns or sets fire to the property of another, except as provided in subsection (a), is guilty of simple arson and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

§ 927. Art. 127. Extortion

Any person subject to this chapter who communicates threats to another person with the intention thereby to obtain anything of value or any acquittance, advantage, or immunity is guilty of extortion and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

§ 928. Art. 128. Assault

(a) Any person subject to this chapter who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who—

(1) commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm; or

(2) commits an assault and intentionally inflicts grievous bodily harm with or without a weapon;

is guilty of aggravated assault and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

§ 929. Art. 129. Burglary

Any person subject to this chapter who, with intent to commit an offense punishable under sections 918–928 of this title (articles 118–128), breaks and enters, in the nighttime, the dwelling house of another, is guilty of burglary and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

§ 930. Art. 130. Housebreaking

Any person subject to this chapter who unlawfully enters the building or structure of another with intent to commit a criminal offense therein is guilty of housebreaking and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

§ 931. Art. 131. Perjury

Any person subject to this chapter who in a judicial proceeding or in a course of justice willfully and corruptly—

(1) upon a lawful oath or in any form allowed by law to be substituted for an oath, gives any false testimony material to the issue or matter of inquiry; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, subscribes any false statement material to the issue or matter of inquiry;

is guilty of perjury and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75; Oct. 18, 1976, P.L. 94–550, § 3, 90 Stat. 2535; Oct. 12, 1982, P.L. 97–295, § 1(13), 96 Stat. 1289.)

§ 932. Art. 132. Frauds against the United States

Any person subject to this chapter—

(1) who, knowing it to be false or fraudulent—

(A) makes any claim against the United States or any officer thereof; or

(B) presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States or any officer thereof;

(2) who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States or any officer thereof—

(A) makes or uses any writing or other paper knowing it to contain any false or fraudulent statements;

(B) makes any oath to any fact or to any writing or other paper knowing the oath to be false; or

(C) forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;

(3) who, having charge, possession, custody or control of any money, or other property of the United States, furnished or intended for the armed forces thereof, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which he receives a certificate or receipt; or

(4) who, being authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the armed forces thereof, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States;

shall, upon conviction, be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

§ 933. Art. 133. Conduct unbecoming an officer and a gentleman

Any commissioned officer, cadet, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 76.)

§ 934. Art. 134. General article

Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.

(Aug. 10, 1956, ch. 1041, 70A Stat. 76.)

SUBCHAPTER XI—MISCELLANEOUS PROVISIONS

Sec.	Art.	
935.	135.	Courts of inquiry.
936.	136.	Authority to administer oaths and to act as notary.
937.	137.	Articles to be explained.
938.	138.	Complaints of wrongs.
939.	139.	Redress of injuries to property.
940.	140.	Delegation by the President.

§ 935. Art. 135. Courts of inquiry

(a) Courts of inquiry to investigate any matter may be convened by any person authorized to convene a general court-martial or by any other person designated by the Secretary concerned for that purpose, whether or not the persons involved have requested such an inquiry.

(b) A court of inquiry consists of three or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(c) Any person subject to this chapter whose conduct is subject to inquiry shall be designated as a party. Any person subject to this chapter or employed by the Department of Defense who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath to faithfully perform their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

(g) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

(Aug. 10, 1956, ch. 1041, 70A Stat. 76.)

§ 936. Art. 136. Authority to administer oaths and to act as notary

(a) The following persons on active duty or performing inactive-duty training may administer oaths for the purposes of military administration, including military justice:

(1) All judge advocates.

(2) All summary courts-martial.

(3) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.

(4) All commanding officers of the Navy, Marine Corps, and Coast Guard.

(5) All staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers.

(6) All other persons designated by regulations of the armed forces or by statute.

(b) The following persons on active duty or performing inactive-duty training may administer oaths necessary in the performance of their duties:

(1) The president, military judge, trial counsel, and assistant trial counsel for all general and special courts-martial.

(2) The president and the counsel for the court of any court of inquiry.

(3) All officers designated to take a deposition.

(4) All persons detailed to conduct an investigation.

(5) All recruiting officers.

(6) All other persons designated by regulations of the armed forces or by statute.

(Aug. 10, 1956, ch. 1041, 70A Stat. 77; July 5, 1960, P.L. 86–589, 74 Stat. 329; Dec. 8, 1967, P.L. 90–179, § 1(7), 81 Stat. 546; Oct. 24, 1968, P.L. 90–632, § 2(34), 82 Stat. 1343; Dec. 6, 1983, P.L. 98–209, § 2(f), 97 Stat. 1393; Nov. 14, 1986, P.L. 99–661, § 804(c), 100 Stat. 3907; Sept. 29, 1988, P.L. 100–456, § 1234(a), 102 Stat. 2059; Nov. 5, 1990, P.L. 101–510, § 551(b), 104 Stat. 1566.)

§ 937. Art. 137. Articles to be explained

(a)(1) The sections of this title (articles of the Uniform Code of Military Justice) specified in paragraph (3) shall be carefully explained to each enlisted member at the time of (or within fourteen days after)—

(A) the member's initial entrance on active duty; or

(B) the member's initial entrance into a duty status with a reserve component.

(2) Such sections (articles) shall be explained again—

(A) after the member has completed six months of active duty or, in the case of a member of a reserve component, after the member has completed basic or recruit training; and

(B) at the time when the member reenlists.

(3) This subsection applies with respect to sections 802, 803, 807–815, 825, 827, 831, 837, 838, 855, 877–934, and 937–939 of this title (articles 2, 3, 7–15, 25, 27, 31, 37, 38, 55, 77–134, and 137–139).

(b) The text of the Uniform Code of Military Justice and of the regulations prescribed by the President under such Code shall be made available to a member on active duty or to a member of a reserve component, upon request by the member, for the member's personal examination.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78; Nov. 14, 1986, P.L. 99–661, § 804(d), 100 Stat. 3907; Feb. 10, 1996, P.L. 104–106, § 1152, 110 Stat. 468.)

§ 938. Art. 138. Complaints of wrongs

Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Secretary concerned a true statement of that complaint, with the proceedings had thereon.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78.)

§ 939. Art. 139. Redress of injuries to property

(a) Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that his property has been wrongfully taken by members of the armed forces, he may, under such regulations as the Secretary concerned may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.

(b) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be considered just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78.)

§ 940. Art. 140. Delegation by the President

The President may delegate any authority vested in him under this chapter, and provide for the subdelegation of any such authority.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78.)

SUBCHAPTER XII—UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

Sec. Art.
941. 141. Status.
942. 142. Judges.
943. 143. Organization and employees.
944. 144. Procedure.
945. 145. Annuities for judges and survivors.
946. 146. Code committee.

§ 941. Art. 141. Status

There is a court of record known as the United States Court of Appeals for the Armed Forces. The court is established under article I of the Constitution. The court is located for administrative purposes only in the Department of Defense.

(Added P.L. 101–189, § 1301(c), Nov. 29, 1989, 103 Stat. 1569 [formerly part of § 867(a)(1)]; amended P.L. 103–337, § 924(a)(2), Oct. 5, 1994, 108 Stat. 2831.)

§ 942. Art. 142. Judges

(a) NUMBER.—The United States Court of Appeals for the Armed Forces consists of five judges.

(b) APPOINTMENT; QUALIFICATION.—(1) Each judge of the court shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, for a specified term determined under paragraph (2). A judge may serve as a senior judge as provided in subsection (e).

(2) The term of a judge shall expire as follows:

(A) In the case of a judge who is appointed after March 31 and before October 1 of any year, the term shall expire on September 30 of the year in which the fifteenth anniversary of the appointment occurs.

(B) In the case of a judge who is appointed after September 30 of any year and before April 1 of the following year, the term shall expire fifteen years after such September 30.

(3) Not more than three of the judges of the court may be appointed from the same political party, and no person may be appointed to be a judge of the court unless the person is a member of the bar of a Federal court or the highest court of a State.

(4) For purposes of appointment of judges to the court, a person retired from the armed forces after 20 or more years of active service (whether or not such person is on the retired list) shall not be considered to be in civilian life.

(c) REMOVAL.—Judges of the court may be removed from office by the President, upon notice and hearing, for—

(1) neglect of duty;

(2) misconduct; or

(3) mental or physical disability.

A judge may not be removed by the President for any other cause.

(d) PAY AND ALLOWANCES.—Each judge of the court is entitled to the same salary and travel allowances as are, and from time to time may be, provided for judges of the United States Courts of Appeals.

(e) SENIOR JUDGES.—(1)(A) A former judge of the court who is receiving retired pay or an annuity under section 945 of this title (article 145) or under subchapter III of chapter 83 or chapter 84 of title 5 shall be a senior judge. The chief judge of the court may call upon an individual who is a senior judge of the court under this subparagraph, with the consent of the senior judge, to perform judicial duties with the court—

(i) during a period a judge of the court is unable to perform his duties because of illness or other disability;

(ii) during a period in which a position of judge of the court is vacant; or

(iii) in any case in which a judge of the court recuses himself.

(B) If, at the time the term of a judge expires, no successor to that judge has been appointed, the chief judge of the court may call upon that judge (with that judge's consent) to continue to perform judicial duties with the court until the vacancy is filled. A judge who, upon the expiration of the judge's term, continues to perform judicial duties with the court without a break in service under this subparagraph shall be a senior judge while such service continues.

(2) A senior judge shall be paid for each day on which he performs judicial duties with the court an amount equal to the daily equivalent of the annual rate of pay provided for a judge of the court. Such pay shall be in lieu of retired pay and in lieu of an annuity under section 945 of this title (article 145), subchapter III of chapter 83 or subchapter II of chapter 84 of title 5, or any other retirement system for employees of the Federal Government.

(3) A senior judge, while performing duties referred to in paragraph (1), shall be provided with such office space and staff assistance as the chief judge considers appropriate and shall be entitled to the per diem, travel allowances, and other allowances provided for judges of the court.

(4) A senior judge shall be considered to be an officer or employee of the United States with respect to his status as a senior judge, but only during periods the senior judge is performing duties referred to in paragraph (1). For the purposes of section 205 of title 18, a senior judge shall be considered to be a special government employee during such periods. Any provision of law that prohibits or limits the political or business activities of an employee of the United States shall apply to a senior judge only during such periods.

(5) The court shall prescribe rules for the use and conduct of senior judges of the court. The chief judge of the court shall transmit such rules, and any amendments to such rules, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives not later than 15 days after the issuance of such rules or amendments, as the case may be.

(6) For purposes of subchapter III of chapter 83 of title 5 (relating to the Civil Service Retirement and Disability System) and

chapter 84 of such title (relating to the Federal Employees' Retirement System) and for purposes of any other Federal Government retirement system for employees of the Federal Government—

(A) a period during which a senior judge performs duties referred to in paragraph (1) shall not be considered creditable service;

(B) no amount shall be withheld from the pay of a senior judge as a retirement contribution under section 8334, 8343, 8422, or 8432 of title 5 or under any other such retirement system for any period during which the senior judge performs duties referred to in paragraph (1);

(C) no contribution shall be made by the Federal Government to any retirement system with respect to a senior judge for any period during which the senior judge performs duties referred to in paragraph (1); and

(D) a senior judge shall not be considered to be a reemployed annuitant for any period during which the senior judge performs duties referred to in paragraph (1).

(f) SERVICE OF ARTICLE III JUDGES.—(1) The Chief Justice of the United States, upon the request of the chief judge of the court, may designate a judge of a United States court of appeals or of a United States district court to perform the duties of judge of the United States Court of Appeals for the Armed Forces—

(A) during a period a judge of the court is unable to perform his duties because of illness or other disability;

(B) in any case in which a judge of the court recuses himself; or

(C) during a period when there is a vacancy on the court and in the opinion of the chief judge of the court such a designation is necessary for the proper dispatch of the business of the court.

(2) The chief judge of the court may not request that a designation be made under paragraph (1) unless the chief judge has determined that no person is available to perform judicial duties with the court as a senior judge under subsection (e).

(3) A designation under paragraph (1) may be made only with the consent of the designated judge and the concurrence of the chief judge of the court of appeals or district court concerned.

(4) Per diem, travel allowances, and other allowances paid to the designated judge in connection with the performance of duties for the court shall be paid from funds available for the payment of per diem and such allowances for judges of the court.

(g) EFFECT OF VACANCY ON COURT.—A vacancy on the court does not impair the right of the remaining judges to exercise the powers of the court.

(Added P.L. 101–189, § 1301(c), Nov. 29, 1989, 103 Stat. 1570 [portions formerly § 867]; amended P.L. 101–510, § 541(f), Nov. 5, 1990, 104 Stat. 1565; P.L. 102–190, § 1061(b), Dec. 5, 1991, 105 Stat. 1474; P.L. 103–337, § 924(c)(1), Oct. 5, 1994, 108 Stat. 2831; P.L. 104–106, § 1502(a)(2), Feb. 10, 1996, 110 Stat. 502; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 943. Art. 143. Organization and employees

(a) CHIEF JUDGE.—(1) The chief judge of the United States Court of Appeals for the Armed Forces shall be the judge of the court in regular active service who is senior in commission among the judges of the court who—

(A) have served for one or more years as judges of the court; and

(B) have not previously served as chief judge.

(2) In any case in which there is no judge of the court in regular active service who has served as a judge of the court for at least one year, the judge of the court in regular active service who is senior in commission and has not served previously as chief judge shall act as the chief judge.

(3) Except as provided in paragraph (4), a judge of the court shall serve as the chief judge under paragraph (1) for a term of five years. If no other judge is eligible under paragraph (1) to serve as chief judge upon the expiration of that term, the chief judge shall continue to serve as chief judge until another judge becomes eligible under that paragraph to serve as chief judge.

(4)(A) The term of a chief judge shall be terminated before the end of five years if—

(i) the chief judge leaves regular active service as a judge of the court; or

(ii) the chief judge notifies the other judges of the court in writing that such judge desires to be relieved of his duties as chief judge.

(B) The effective date of a termination of the term under subparagraph (A) shall be the date on which the chief judge leaves regular active service or the date of the notification under subparagraph (A)(ii), as the case may be.

(5) If a chief judge is temporarily unable to perform his duties as a chief judge, the duties shall be performed by the judge of the court in active service who is present, able and qualified to act, and is next in precedence.

(b) PRECEDENCE OF JUDGES.—The chief judge of the court sha ll have precedence and preside at any session that he attends. The other judges shall have precedence and preside according to the seniority of their original commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age.

(c) STATUS OF CERTAIN POSITIONS.—(1) Attorney positions of employment under the Court of Appeals for the Armed Forces are excepted from the competitive service. A position of employment under the court that is provided primarily for the service of one judge of the court, reports directly to the judge, and is a position of a confidential character is excepted from the competitive service. Appointments to positions referred to in the preceding sentences shall be made by the court, without the concurrence of any other officer or employee of the executive branch, in the same manner as appointments are made to other executive branch positions of a confidential or policy-determining character for which it is not practicable to examine or to hold a competitive examination. Such positions shall not be counted as positions of that character for purposes of any limitation on the number of positions of that character provided in law.

(2) In making appointments to the positions described in paragraph (1), preference shall be given, among equally qualified persons, to persons who are preference eligibles (as defined in section 2108(3) of title 5).

(Added P.L. 101–189, § 1301(c), Nov. 29, 1989, 103 Stat. 1572 [portions formerly § 867(a)]; amended P.L. 102–484, § 1061(a), Oct. 23, 1992, 106 Stat. 2503; P.L. 103–337, § 924(c)(1), Oct. 5, 1994, 108 Stat. 2831; P.L. 104–201, § 1068(b), Sept. 23, 1996, 110 Stat. 2655; P.L. 105–85, § 1073(a)(11), Nov. 18, 1997, 111 Stat. 1900.)

§ 944. Art. 144. Procedure

The United States Court of Appeals for the Armed Forces may prescribe its rules of procedure and may determine the number of judges required to constitute a quorum.

(Added P.L. 101–189, § 1301(c), Nov. 29, 1989, 103 Stat. 1572 [portions formerly § 867(a)]; amended P.L. 103–337, § 924(c)(1), Oct. 5, 1994, 108 Stat. 2831.)

§ 945. Art. 145. Annuities for judges and survivors

(a) RETIREMENT ANNUITIES FOR JUDGES.—(1) A person who has completed a term of service for which he was appointed as a judge of the United States Court of Appeals for the Armed Forces is eligible for an annuity under this section upon separation from civilian service in the Federal Government. A person who continues service with the court as a senior judge under section 942(e)(1)(B) of this title (article 142(e)(1)(B)) upon the expiration of the judge's term shall be considered to have been separated from civilian service in the Federal Government only upon the termination of that continuous service.

(2) A person who is eligible for an annuity under this section shall be paid that annuity if, at the time he becomes eligible to receive that annuity, he elects to receive that annuity in lieu of any other annuity for which he may be eligible at the time of such election (whether an immediate or a deferred annuity) under subchapter III of chapter 83 or subchapter II of chapter 84 of title 5 or any other retirement system for civilian employees of the Federal Government. Such an election may not be revoked.

(3)(A) The Secretary of Defense shall notify the Director of the Office of Personnel Management whenever an election under paragraph (2) is made affecting any right or interest under subchapter III of chapter 83 or subchapter II of chapter 84 of title 5 based on service as a judge of the United States Court of Appeals for the Armed Forces.

(B) Upon receiving any notification under subparagraph (A) in the case of a person making an election under paragraph (2), the Director shall determine the amount of the person's lump-sum credit under subchapter III of chapter 83 or subchapter II of chapter 84 of title 5, as applicable, and shall request the Secretary of the Treasury to transfer such amount from the Civil Service Retirement and Disability Fund to the Department of Defense Military Retirement Fund. The Secretary of the Treasury shall make any transfer so requested.

(C) In determining the amount of a lump-sum credit under section 8331(8) of title 5 for purposes of this paragraph—

(i) interest shall be computed using the rates under section 8334(e)(3) of such title; and

(ii) the completion of 5 years of civilian service (or longer) shall not be a basis for excluding interest.

(b) AMOUNT OF ANNUITY.—The annuity payable under this section to a person who makes an election under subsection (a)(2) is 80 percent of the rate of pay for a judge in active service on the United States Court of Appeals for the Armed Forces as of the date on which the person is separated from civilian service.

(c) RELATION TO THRIFT SAVINGS PLAN.—Nothing in this section affects any right of any person to participate in the thrift savings plan under section 8351 of title 5 or subchapter III of chapter 84 of such title.

(d) SURVIVOR ANNUITIES.—The Secretary of Defense shall prescribe by regulation a program to provide annuities for survivors and former spouses of persons receiving annuities under this section by reason of elections made by such persons under subsection (a)(2). That program shall, to the maximum extent practicable, provide benefits and establish terms and conditions that are similar to those provided under survivor and former spouse annuity programs under other retirement systems for civilian employees of the Federal Government. The program may include provisions for the reduction in the annuity paid the person as a condition for the survivor annuity. An election by a judge (including a senior judge) or former judge to receive an annuity under this section terminates any right or interest which any other individual may have to a survivor annuity under any other retirement system for civilian employees of the Federal Government based on the service of that judge or former judge as a civilian officer or employee of the Federal Government (except with respect to an election under subsection (g)(1)(B)).

(e) COST-OF-LIVING INCREASES.—The Secretary of Defense shall periodically increase annuities and survivor annuities paid under this section in order to take account of changes in the cost of living. The Secretary shall prescribe by regulation procedures for increases in annuities under this section. Such system shall, to the maximum extent appropriate, provide cost-of-living adjustments that are similar to those that are provided under other retirement systems for civilian employees of the Federal Government.

(f) DUAL COMPENSATION.—A person who is receiving an annuity under this section by reason of service as a judge of the court and who is appointed to a position in the Federal Government shall, during the period of such person's service in such position, be entitled to receive only the annuity under this section or the pay for that position, whichever is higher.

(g) ELECTION OF JUDICIAL RETIREMENT BENEFITS.—(1) A person who is receiving an annuity under this section by reason of service as a judge of the court and who later is appointed as a justice or judge of the United States to hold office during good behavior and who retires from that office, or from regular active service in that office, shall be paid either (A) the annuity under this section, or (B) the annuity or salary to which he is entitled by reason of his service as such a justice or judge of the United States, as determined by an election by that person at the time of his retirement from the office, or from regular active service in the office, of

justice or judge of the United States. Such an election may not be revoked.

(2) An election by a person to be paid an annuity or salary pursuant to paragraph (1)(B) terminates (A) any election previously made by such person to provide a survivor annuity pursuant to subsection (d), and (B) any right of any other individual to receive a survivor annuity pursuant to subsection (d) on the basis of the service of that person.

(h) SOURCE OF PAYMENT OF ANNUITIES.—Annuities and survivor annuities paid under this section shall be paid out of the Department of Defense Military Retirement Fund.

(i) ELIGIBILITY TO ELECT BETWEEN RETIREMENT SYSTEMS.—(1) This subsection applies with respect to any person who—

(A) prior to being appointed as a judge of the United States Court of Appeals for the Armed Forces, performed civilian service of a type making such person subject to the Civil Service Retirement System; and

(B) would be eligible to make an election under section 301(a)(2) of the Federal Employees' Retirement System Act of 1986, by virtue of being appointed as such a judge, but for the fact that such person has not had a break in service of sufficient duration to be considered someone who is being reemployed by the Federal Government.

(2) Any person with respect to whom this subsection applies shall be eligible to make an election under section 301(a)(2) of the Federal Employees' Retirement System Act of 1986 to the same extent and in the same manner (including subject to the condition set forth in section 301(d) of such Act) as if such person's appointment constituted reemployment with the Federal Government.

(Added P.L. 101–189, § 1301(c), Nov. 29, 1989, 103 Stat. 1572 [formerly § 867(i)]; amended P.L. 102–190, § 1061(b)(1)(C), Dec. 5, 1991, 105 Stat. 1474; P.L. 102–484, §§ 1052(11), 1062(a), Oct. 23, 1992, 106 Stat. 2499, 2504; P.L. 103–337, § 924(c)(1), Oct. 5, 1994, 108 Stat. 2831.)

§ 946. Art. 146. Code committee

(a) ANNUAL SURVEY.—A committee shall meet at least annually and shall make an annual comprehensive survey of the operation of this chapter.

(b) COMPOSITION OF COMMITTEE.—The committee shall consist of—

(1) the judges of the United States Court of Appeals for the Armed Forces;

(2) the Judge Advocates General of the Army, Navy, and Air Force, the Chief Counsel of the Coast Guard, and the Staff Judge Advocate to the Commandant of the Marine Corps; and

(3) two members of the public appointed by the Secretary of Defense.

(c) REPORTS.—(1) After each such survey, the committee shall submit a report—

(A) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives; and

(B) to the Secretary of Defense, the Secretaries of the military departments, and the Secretary of Transportation.

(2) Each report under paragraph (1) shall include the following:

(A) Information on the number and status of pending cases.

(B) Any recommendation of the committee relating to—

(i) uniformity of policies as to sentences;

(ii) amendments to this chapter; and

(iii) any other matter the committee considers appropriate.

(d) QUALIFICATIONS AND TERMS OF APPOINTED MEMBERS.—Each member of the committee appointed by the Secretary of Defense under subsection (b)(3) shall be a recognized authority in military justice or criminal law. Each such member shall be appointed for a term of three years.

(e) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App. I) shall not apply to the committee.

(Added P.L. 101–189, § 1301(c), Nov. 29, 1989, 103 Stat. 1574 [formerly § 867(g)]; amended P.L. 103–337, § 924(c)(1), Oct. 5, 1994, 108 Stat. 2831; P.L. 104–106, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

CHAPTER 48—MILITARY CORRECTIONAL FACILITIES

Sec.
951. Establishment; organization; administration.
952. Parole.
953. Remission or suspension of sentence; restoration to duty; reenlistment.
954. Voluntary extension; probation.
955. Prisoners transferred to or from foreign countries.
956. Deserters, prisoners, members absent without leave: expenses and rewards.

§ 951. Establishment; organization; administration [1]

(a) The Secretaries concerned may provide for the establishment of such military correctional facilities as are necessary for the confinement of offenders against chapter 47 of this title.

(b) The Secretary concerned shall—

(1) designate an officer for each armed force under his jurisdiction to administer military correctional facilities established under this chapter;

(2) provide for the education, training, rehabilitation, and welfare of offenders confined in a military correctional facility of his department; and

(3) provide for the organization and equipping of offenders selected for training with a view to their honorable restoration to duty or possible reenlistment.

(c) There shall be an officer in command of each major military correctional facility. Under regulations to be prescribed by the Secretary concerned, the officer in command shall have custody and control of offenders confined within the facility which he commands, and shall usefully employ those offenders as he considers best for their health and reformation, with a view to their restoration to duty, enlistment for future service, or return to civilian life as useful citizens.

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[1] Section 115(a)(8)(C) of the Department of Justice Appropriations Act, 1998 (title I of P.L. 105–119, Nov. 26, 1997, 111 Stat. 2466), provides:

(C)(i) The Secretary of Defense shall specify categories of conduct punishable under the Uniform Code of Military Justice which encompass a range of conduct comparable to that described in section 170101(a)(3)(A) and (B) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(a)(3)(A) and (B)) [relating to criminal offenses against a victim who is a minor and sexually violent offenses, respectively], and such other conduct as the Secretary deems appropriate for inclusion for purposes of this subparagraph.

(ii) In relation to persons sentenced by a court martial for conduct in the categories specified under clause (i), the Secretary shall prescribe procedures and implement a system to—

(I) provide notice concerning the release from confinement or sentencing of such persons;

(II) inform such persons concerning registration obligations; and

(III) track and ensure compliance with registration requirements by such persons during any period of parole, probation, or other conditional release or supervision related to the offense.

(iii) The procedures and requirements established by the Secretary under this subparagraph shall, to the maximum extent practicable, be consistent with those specified for Federal offenders under the amendments made by subparagraphs (A) and (B).

(iv) If a person within the scope of this subparagraph is confined in a facility under the control of the Bureau of Prisons at the time of release, the Bureau of Prisons shall provide notice of release and inform the person concerning registration obligations under the procedures specified in section 4042(c) of title 18, United States Code.

(d) There may be made or repaired at each military correctional facility such supplies for the armed forces or other agencies of the United States as can properly and economically be made or repaired at such facilities.

(Added P.L. 90–377, § 1, July 5, 1968, 82 Stat. 287; amended P.L. 96–513, § 511(27), Dec. 12, 1980, 94 Stat. 2922.)

§ 952. Parole

(a) The Secretary concerned may provide a system of parole for offenders who are confined in military correctional facilities and who were at the time of commission of their offenses subject to the authority of that Secretary.

(b) In a case in which parole for an offender serving a sentence of confinement for life is denied, only the President or the Secretary concerned may grant the offender parole on appeal of that denial. The authority to grant parole on appeal in such a case may not be delegated.

(Added P.L. 90–377, § 1, July 5, 1968, 82 Stat. 287; amended P.L. 105–85, § 582(a), Nov. 18, 1997, 111 Stat. 1760.)

§ 953. Remission or suspension of sentence; restoration to duty; reenlistment

For offenders who were at the time of commission of their offenses subject to his authority and who merit such action, the Secretary concerned shall establish—

(1) a system for the remission or suspension of the unexecuted part of the sentences of selected offenders;

(2) a system for the restoration to duty of such offenders who have had the unexecuted part of their sentences remitted or suspended and who have not been discharged; and

(3) a system for the enlistment of such offenders who have had the unexecuted part of their sentences remitted and who have been discharged.

(Added P.L. 90–377, § 1, July 5, 1968, 82 Stat. 287.)

§ 954. Voluntary extension; probation

The Secretary concerned may provide for persons who were subject to his authority at the time of commission of their offenses a system for retention of selected offenders beyond expiration of normal service obligation in order to voluntarily serve a period of probation with a view to honorable restoration to duty.

(Added P.L. 90–377, § 1, July 5, 1968, 82 Stat. 288; amended P.L. 105–85, § 1073(a)(12), Nov. 18, 1997, 111 Stat. 1900.)

§ 955. Prisoners transferred to or from foreign countries

(a) When a treaty is in effect between the United States and a foreign country providing for the transfer of convicted offenders, the Secretary concerned may, with the concurrence of the Attorney General, transfer to such foreign country any offender against chapter 47 of this title. Such transfer shall be effected subject to the terms of such treaty and chapter 306 of title 18.

(b) Whenever the United States is party to an agreement on the status of forces under which the United States may request that it take custody of a prisoner belonging to its armed forces who

is confined by order of a foreign court, the Secretary concerned may provide for the carrying out of the terms of such confinement in a military correctional facility of his department or in any penal or correctional institution under the control of the United States or which the United States may be allowed to use. Except as otherwise specified in such agreement, such person shall be treated as if he were an offender against chapter 47 of this title.

(Added P.L. 95–144, § 4, Oct. 28, 1977, 91 Stat. 1221; amended P.L. 96–513, § 511(28), Dec. 12, 1980, 94 Stat. 2922.)

§ 956. Deserters, prisoners, members absent without leave: expenses and rewards

Funds appropriated to the Department of Defense may be used for the following purposes:

(1) Expenses for the apprehension and delivery of deserters, prisoners, and members absent without leave, including the payment of rewards, in an amount not to exceed $75, for the apprehension of any such person.

(2) Expenses of prisoners confined in nonmilitary facilities.

(3) Payment of a gratuity of not to exceed $25 to each prisoner upon release from confinement in a military or contract prison facility.

(4) The issue of authorized articles to prisoners and other persons in military custody.

(5) Under such regulations as the Secretary concerned may prescribe, expenses incident to the maintenance, pay, and allowances of prisoners of war, other persons in the custody of the Army, Navy, or Air Force whose status is determined by the Secretary concerned to be similar to prisoners of war, and persons detained in the custody of the Army, Navy, or Air Force pursuant to Presidential proclamation.

(Added P.L. 98–525, § 1401(b), Oct. 19, 1984, 98 Stat. 2614.)

CHAPTER 49—MISCELLANEOUS PROHIBITIONS AND PENALTIES

Sec.
971. Service credit: officers may not count service performed while serving as cadet or midshipman.
972. Members: effect of time lost.
973. Duties: officers on active duty; performance of civil functions restricted.
[974. Repealed].
[975. Transferred.]
976. Membership in military unions, organizing of military unions, and recognition of military unions prohibited.
977. Operation of commissary stores: assignment of active duty members generally prohibited.
978. Drug and alcohol abuse and dependency: testing of new entrants.
979. Prohibition on loan and grant assistance to persons convicted of certain crimes.
980. Limitation on use of humans as experimental subjects.
981. Limitation on number of enlisted aides.
982. Members: service on State and local juries.
983. Institutions of higher education that prevent ROTC access or military recruiting on campus: denial of grants and contracts from Department of Defense, Department of Education, and certain other departments and agencies.
985. Persons convicted of capital crimes: denial of certain burial-related benefits.
986. Security clearances: limitations.

§ 971. Service credit: officers may not count service performed while serving as cadet or midshipman

(a) PROHIBITION ON COUNTING ENLISTED SERVICE PERFORMED WHILE AT SERVICE ACADEMY OR IN NAVAL RESERVE.—The period of service under an enlistment or period of obligated service while also performing service as a cadet or midshipman or serving as a midshipman in the Naval Reserve, may not be counted in computing, for any purpose, the length of service of an officer of an armed force or an officer in the Commissioned Corps of the Public Health Service.

(b) PROHIBITION ON COUNTING SERVICE AS A CADET OR MIDSHIPMAN.—In computing length of service for any purpose, service as a cadet or midshipman may not be credited to any of the following officers:

(1) An officer of the Navy or Marine Corps.

(2) A commissioned officer of the Army or Air Force.

(3) An officer of the Coast Guard.

(4) An officer in the Commissioned Corps of the Public Health Service.

(c) SERVICE AS A CADET OR MIDSHIPMAN DEFINED.—In this section, the term "service as a cadet or midshipman" means—

(1) service as a cadet at the United States Military Academy, United States Air Force Academy, or United States Coast Guard Academy; or

(2) service as a midshipman at the United States Naval Academy.

(Added P.L. 85–861, § 1(20), Sept. 2, 1958, 72 Stat. 1442; amended P.L. 90–235, § 6(a) (1), Jan. 2, 1968, 81 Stat. 761; P.L. 98–557, § 17(a), Oct. 30, 1984, 98 Stat. 2867; P.L. 101–189, § 652(a) (1), (2), Nov. 29, 1989, 103 Stat. 1461; P.L. 104–201, § 581, Sept. 23, 1996, 110 Stat. 2537; P.L. 105–85, § 1073(a)(13), Nov. 18, 1997, 111 Stat. 1900.)

§ 972. Members: effect of time lost

(a) ENLISTED MEMBERS REQUIRED TO MAKE UP TIME LOST.—An enlisted member of an armed force who—

(1) deserts;

(2) is absent from his organization, station, or duty for more than one day without proper authority, as determined by competent authority;

(3) is confined by military or civilian authorities for more than one day in connection with a trial, whether before, during, or after the trial; or

(4) is unable for more than one day, as determined by competent authority, to perform his duties because of intemperate use of drugs or alcoholic liquor, or because of disease or injury resulting from his misconduct;

is liable, after his return to full duty, to serve for a period that, when added to the period that he served before his absence from duty, amounts to the term for which he was enlisted or inducted.

(b) OFFICERS NOT ALLOWED SERVICE CREDIT FOR TIME LOST.—In the case of an officer of an armed force who after February 10, 1996—

(1) deserts;

(2) is absent from his organization, station, or duty for more than one day without proper authority, as determined by competent authority;

(3) is confined by military or civilian authorities for more than one day in connection with a trial, whether before, during, or after the trial; or

(4) is unable for more than one day, as determined by competent authority, to perform his duties because of intemperate use of drugs or alcoholic liquor, or because of disease or injury resulting from his misconduct;

the period of such desertion, absence, confinement, or inability to perform duties may not be counted in computing, for any purpose other than basic pay under section 205 of title 37, the officer's length of service.

(Added P.L. 85–861, § 1(20), Sept. 2, 1958, 72 Stat. 1443; amended P.L. 104–106, § 561(a), (b), (c)(1), Feb. 10, 1996, 110 Stat. 321; P.L. 105–85, § 1073(a)(14), Nov. 18, 1997, 111 Stat. 1900.)

§ 973. Duties: officers on active duty; performance of civil functions restricted

(a) No officer of an armed force on active duty may accept employment if that employment requires him to be separated from his organization, branch, or unit, or interferes with the performance of his military duties.

(b)(1) This subsection applies—

(A) to a regular officer of an armed force on the active-duty list (and a regular officer of the Coast Guard on the active duty promotion list);

(B) to a retired regular officer of an armed force serving on active duty under a call or order to active duty for a period in excess of 270 days; and

(C) to a reserve officer of an armed force serving on active duty under a call or order to active duty for a period in excess of 270 days.

(2)(A) Except as otherwise authorized by law, an officer to whom this subsection applies may not hold, or exercise the functions of, a civil office in the Government of the United States—

(i) that is an elective office;

(ii) that requires an appointment by the President by and with the advice and consent of the Senate; or

(iii) that is a position in the Executive Schedule under sections 5312 through 5317 of title 5.

(B) An officer to whom this subsection applies may hold or exercise the functions of a civil office in the Government of the United States that is not described in subparagraph (A) when assigned or detailed to that office or to perform those functions.

(3) Except as otherwise authorized by law, an officer to whom this subsection applies may not hold or exercise, by election or appointment, the functions of a civil office in the government of a State, the District of Columbia, or a territory, possession, or commonwealth of the United States (or of any political subdivision of any such government).

(4) Nothing in this subsection shall be construed to invalidate any action undertaken by an officer in furtherance of assigned official duties.

(c) An officer to whom subsection (b) applies may seek and hold nonpartisan civil office on an independent school board that is located exclusively on a military reservation.

(d) The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating in the Navy, shall prescribe regulations to implement this section.

(Added P.L. 90–235, § 4(a)(5)(A), Jan. 2, 1968, 81 Stat. 759; amended P.L. 96–513, § 116, Dec. 12, 1980, 94 Stat. 2878; P.L. 98–94, § 1002(a), Sept. 24, 1983, 97 Stat. 655; P.L. 101–510, § 556, Nov. 5, 1990, 104 Stat. 1570; P.L. 106–65, § 506, Oct. 5, 1999, 113 Stat. 591.)

[§ 974. Repealed. P.L. 105–261, § 569(a), Oct. 17, 1998, 112 Stat. 2032]

[§ 975. Transferred to § 2390]

§ 976. Membership in military unions, organizing of military unions, and recognition of military unions prohibited

(a) In this section:

(1) The term "member of the armed forces" means (A) a member of the armed forces who is serving on active duty, (B) a member of a the National Guard who is serving on full-time National Guard duty, or (C) a member of a Reserve component while performing inactive-duty training.

(2) The term "military labor organization" means any organization that engages in or attempts to engage in—

(A) negotiating or bargaining with any civilian officer or employee, or with any member of the armed forces, on

behalf of members of the armed forces, concerning the terms or conditions of military service of such members in the armed forces;

(B) representing individual members of the armed forces before any civilian officer or employee, or any member of the armed forces, in connection with any grievance or complaint of any such member arising out of the terms or conditions of military service of such member in the armed forces; or

(C) striking, picketing, marching, demonstrating, or any other similar form of concerted action which is directed against the Government of the United States and which is intended to induce any civilian officer or employee, or any member of the armed forces, to—

(i) negotiate or bargain with any person concerning the terms or conditions of military service of any member of the armed forces,

(ii) recognize any organization as a representative of individual members of the armed forces in connection with complaints and grievances of such members arising out of the terms or conditions of military service of such members in the armed forces, or

(iii) make any change with respect to the terms or conditions of military service of individual members of the armed forces.

(3) The term "civilian officer or employee" means an employee, as such term is defined in section 2105 of title 5.

(b) It shall be unlawful for a member of the armed forces, knowing of the activities or objectives of a particular military labor organization—

(1) to join or maintain membership in such organization; or

(2) to attempt to enroll any other member of the armed forces as a member of such organization.

(c) It shall be unlawful for any person—

(1) to enroll in a military labor organization any member of the armed forces or to solicit or accept dues or fees for such an organization from any member of the armed forces; or

(2) to negotiate or bargain, or attempt through any coercive act to negotiate or bargain, with any civilian officer or employee, or any member of the armed forces, on behalf of members of the armed forces, concerning the terms or conditions of service of such members;

(3) to organize or attempt to organize, or participate in, any strike, picketing, march, demonstration, or other similar form of concerted action involving members of the armed forces that is directed against the Government of the United States and that is intended to induce any civilian officer or employee, or any member of the armed forces, to—

(A) negotiate or bargain with any person concerning the terms or conditions of service of any member of the armed forces,

(B) recognize any military labor organization as a representative of individual members of the armed forces in

connection with any complaint or grievance of any such member arising out of the terms or conditions of service of such member in the armed forces, or

(C) make any change with respect to the terms or conditions of service in the armed forces of individual members of the armed forces; or

(4) to use any military installation, facility, reservation, vessel, or other property of the United States for any meeting, march, picketing, demonstration, or other similar activity for the purpose of engaging in any activity prohibited by this subsection or by subsection (b) or (d).

(d) It shall be unlawful for any military labor organization to represent, or attempt to represent, any member of the armed forces before any civilian officer or employee, or any member of the armed forces, in connection with any grievance or complaint of any such member arising out of the terms or conditions of service of such member in the armed forces.

(e) No member of the armed forces, and no civilian officer or employee, may—

(1) negotiate or bargain on behalf of the United States concerning the terms or conditions of military service of members of the armed forces with any person who represents or purports to represent members of the armed forces, or

(2) permit or authorize the use of any military installation, facility, reservation, vessel, or other property of the United States for any meeting, march, picketing, demonstration, or other similar activity which is for the purpose of engaging in any activity prohibited by subsection (b), (c), or (d).

Nothing in this subsection shall prevent commanders or supervisors from giving consideration to the views of any member of the armed forces presented individually or as a result of participation on command-sponsored or authorized advisory councils, committees, or organizations.

(f) Whoever violates subsection (b), (c), or (d) shall be fined under title 18 or imprisoned not more than 5 years, or both, except that, in the case of an organization (as defined in section 18 of such title), the fine shall not be less than $25,000.

(g) Nothing in this section shall limit the right of any member of the armed forces—

(1) to join or maintain membership in any organization or association not constituting a "military labor organization" as defined in subsection (a)(2) of this section;

(2) to present complaints or grievances concerning the terms or conditions of the service of such member in the armed forces in accordance with established military procedures;

(3) to seek or receive information or counseling from any source;

(4) to be represented by counsel in any legal or quasi-legal proceeding, in accordance with applicable laws and regulations;

(5) to petition the Congress for redress of grievances; or

(6) to take such other administrative action to seek such administrative or judicial relief, as is authorized by applicable laws and regulations.

(Added as § 975 P.L. 95–610, § 2(a), Nov. 8, 1978, 92 Stat. 3085; redesignated § 976, P.L. 96–107, § 821(a), Nov. 9, 1979, 93 Stat. 820; amended P.L. 98–525, § 414(a)(6), Oct. 19, 1984, 98 Stat. 2519; P.L. 99–661, § 1343(a)(2), Nov. 14, 1986, 100 Stat. 3992; P.L. 100–26, § 7(k)(2), April 21, 1987, 101 Stat. 284; P.L. 105–85, § 1073(a)(15), Nov. 18, 1997, 111 Stat. 1900.)

§ 977. Operation of commissary stores: assignment of active duty members generally prohibited

(a) GENERAL RULE.—A member of the armed forces on active duty may not be assigned to the operation of a commissary store.

(b) EXCEPTION FOR DCA DIRECTOR.—The Secretary of Defense may assign an officer on the active-duty list to serve as the Director of the Defense Commissary Agency.

(c) EXCEPTION FOR CERTAIN ADDITIONAL MEMBERS.—Not more than 18 members (in addition to the officer referred to in subsection (b)) of the armed forces on active duty may be assigned to the Defense Commissary Agency. Members who may be assigned under this subsection to regional headquarters of the agency shall be limited to enlisted members assigned to duty as advisors in the regional headquarters responsible for overseas commissaries and to veterinary specialists.

(d) EXCEPTION FOR CERTAIN NAVY PERSONNEL.—(1) The Secretary of the Navy may assign to the Defense Commissary Agency a member of the Navy on active duty whose assignment afloat is part of the operation of a ship's food service or a ship's store. Any such assignment shall be on a nonreimbursable basis.

(2) The number of such members assigned to the Defense Commissary Agency during any period may not exceed 400.

(Added P.L. 103–160, § 351(a), Nov. 30, 1993, 107 Stat. 1626; amended P.L. 105–85, § 1073(a)(16), Nov. 18, 1997, 111 Stat. 1901; P.L. 106–65, § 1066(a)(6), Oct. 5, 1999, 113 Stat. 770.)

§ 978. Drug and alcohol abuse and dependency: testing of new entrants

(a)(1) The Secretary concerned shall require that, except as provided under paragraph (2), each person applying for an original enlistment or appointment in the armed forces shall be required, before becoming a member of the armed forces, to—

(A) undergo testing (by practicable, scientifically supported means) for drug and alcohol use; and

(B) be evaluated for drug and alcohol dependency.

(2) The Secretary concerned may provide that, in lieu of undergoing the testing and evaluation described in paragraph (1) before becoming a member of the armed forces, a member of the armed forces under the Secretary's jurisdiction may be administered that testing and evaluation after the member's initial entry on active duty. In any such case, the testing and evaluation shall be carried out within 72 hours of the member's initial entry on active duty.

(3) The Secretary concerned shall require an applicant for appointment as a cadet or midshipman to undergo the testing and evaluation described in paragraph (1) within 72 hours of such appointment. The Secretary concerned shall require a person to whom a commission is offered under section 2106 of this title fol-

lowing completion of the program of advanced training under the Reserve Officers' Training Corps program to undergo such testing and evaluation before such an appointment is executed.

(b) A person who refuses to consent to testing and evaluation required by subsection (a) may not (unless that person subsequently consents to such testing and evaluation)—

(1) be accepted for an original enlistment in the armed forces or given an original appointment as an officer in the armed forces; or

(2) if such person is already a member of the armed forces, be retained in the armed forces.

An original appointment of any such person as an officer shall be terminated.

(c)(1) A person determined, as the result of testing conducted under subsection (a)(1), to be dependent on drugs or alcohol shall be denied entrance into the armed forces.

(2) The enlistment or appointment of a person who is determined, as a result of an evaluation conducted under subsection (a)(2) to be dependent on drugs or alcohol at the time of such enlistment or appointment shall be void.

(3) A person who is denied entrance into the armed forces under paragraph (1), or whose enlistment or appointment is voided under paragraph (2), shall be referred to a civilian treatment facility.

(4) The Secretary concerned may place on excess leave any member of the armed forces whose test results under subsection (a)(2) are positive for drug or alcohol use. The Secretary may continue such member's status on excess leave pending disposition of the member's case and processing for administrative separation.

(d) The testing and evaluation required by subsection (a) shall be carried out under regulations prescribed by the Secretary of Defense in consultation with the Secretary of Transportation. Those regulations shall apply uniformly throughout the armed forces.

(e) In time of war, or time of emergency declared by Congress or the President, the President may suspend the provisions of subsection (a).

(Added P.L. 97–295, § 1(14)(A), Oct. 12, 1982, 96 Stat. 1289; amended in its entirety P.L. 100–180, § 513(a)(1), Dec. 4, 1987, 101 Stat. 1091; amended in its entirety P.L. 100–456, § 521(a), Sept. 29, 1988, 102 Stat. 1972; amended P.L. 101–189, § 513(a)–(c), Nov. 29, 1989, 103 Stat. 1440; P.L. 101–510, § 1484(k)(4), Nov. 5, 1990, 104 Stat. 1719; P.L. 103–160, § 572, Nov. 30, 1993, 107 Stat. 1673.)

§ 979. Prohibition on loan and grant assistance to persons convicted of certain crimes

Funds appropriated to the Department of Defense may not be used to provide a loan, a guarantee of a loan, or a grant to any person who has been convicted by a court of general jursidiction of any crime which involved the use of (or assisting others in the use of) force, trespass, or the seizure of property under the control of an institution of higher education to prevent officials or students of the institution from engaging in their duties or pursuing their studies.

(Added P.L. 98–525, § 1401(c), Oct. 19, 1984, 98 Stat. 2615.)

§ 980. Limitation on use of humans as experimental subjects

Funds appropriated to the Department of Defense may not be used for research involving a human being as an experimental subject unless—

(1) the informed consent of the subject is obtained in advance; or

(2) in the case of research intended to be beneficial to the subject, the informed consent of the subject or a legal representative of the subject is obtained in advance.

(Added P.L. 98–525, § 1401(c), Oct. 19, 1984, 98 Stat. 2615.)

§ 981. Limitation on number of enlisted aides

(a) Subject to subsection (b), the total number of enlisted members that may be assigned or otherwise detailed to duty as enlisted aides on the personal staffs of officers of the Army, Navy, Marine Corps, Air Force, and Coast Guard (when operating as a service of the Navy) during a fiscal year is the number equal to the sum of (1) four times the number of officers serving on active duty at the end of the preceding fiscal year in the grade of general or admiral, and (2) two times the number of officers serving on active duty at the end of the preceding fiscal year in the grade of lieutenant general or vice admiral.

(b) Not more than 300 enlisted members may be assigned to duty at any time as enlisted aides for officers of the Army, Navy, Air Force, and Marine Corps.

(Added P.L. 98–525, § 1401(c), Oct. 19, 1984, 98 Stat. 2615.)

§ 982. Members: service on State and local juries

(a) A member of the armed forces on active duty may not be required to serve on a State or local jury if the Secretary concerned determines that such service—

(1) would unreasonably interfere with the performance of the member's military duties; or

(2) would adversely affect the readiness of the unit, command, or activity to which the member is assigned.

(b) A determination by the Secretary concerned under this section is conclusive.

(c) The Secretary concerned shall prescribe regulations for the administration of this section.

(d) In this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and each territory of the United States.

(Added P.L. 99–661, § 502(a), Nov. 14, 1986, 100 Stat. 3863.)

§ 983. Institutions of higher education that prevent ROTC access or military recruiting on campus: denial of grants and contracts from Department of Defense, Department of Education, and certain other departments and agencies [1]

(a) DENIAL OF FUNDS FOR PREVENTING ROTC ACCESS TO CAMPUS.—No funds described in subsection (d)(1) may be provided by contract or by grant (including a grant of funds to be available for student aid) to an institution of higher education (including any subelement of such institution) if the Secretary of Defense determines that that institution (or any subelement of that institution) has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents—

(1) the Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (in accordance with section 654 of this title and other applicable Federal laws) at that institution (or any subelement of that institution); or

(2) a student at that institution (or any subelement of that institution) from enrolling in a unit of the Senior Reserve Officer Training Corps at another institution of higher education.

(b) DENIAL OF FUNDS FOR PREVENTING MILITARY RECRUITING ON CAMPUS.—No funds described in subsection (d)(2) may be provided by contract or by grant (including a grant of funds to be available for student aid) to an institution of higher education (including any subelement of such institution) if the Secretary of Defense determines that that institution (or any subelement of that institution) has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents—

(1) the Secretary of a military department or Secretary of Transportation from gaining entry to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting; or

(2) access by military recruiters for purposes of military recruiting to the following information pertaining to students (who are 17 years of age or older) enrolled at that institution (or any subelement of that institution):

(A) Names, addresses, and telephone listings.

(B) Date and place of birth, levels of education, academic majors, degrees received, and the most recent educational institution enrolled in by the student.

(c) EXCEPTIONS.—The limitation established in subsection (a) or (b) shall not apply to an institution of higher education (or any subelement of that institution) if the Secretary of Defense determines that—

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[1] Section 8120 of the Department of Defense Appropriations Act, 2000 (P.L. 106–79; 113 Stat. 1260), provides:

SEC. 8120. During the current fiscal year and hereafter, any Federal grant of funds to an institution of higher education to be available solely for student financial assistance or related administrative costs may be used for the purpose for which the grant is made without regard to any provision to the contrary in section 514 of the Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations Act, 1997 (10 U.S.C. 503 note), or section 983 of title 10, United States Code.

(1) the institution (and each subelement of that institution) has ceased the policy or practice described in that subsection; or

(2) the institution of higher education involved has a longstanding policy of pacifism based on historical religious affiliation.

(d) COVERED FUNDS.—(1) The limitation established in subsection (a) applies to the following:

(A) Any funds made available for the Department of Defense.

(B) Any funds made available in a Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act.

(2) The limitation established in subsection (b) applies to the following:

(A) Funds described in paragraph (1).

(B) Any funds made available for the Department of Transportation.

(e) NOTICE OF DETERMINATIONS.—Whenever the Secretary of Defense makes a determination under subsection (a), (b), or (c), the Secretary—

(1) shall transmit a notice of the determination to the Secretary of Education and to Congress; and

(2) shall publish in the Federal Register a notice of the determination and the effect of the determination on the eligibility of the institution of higher education (and any subelement of that institution) for contracts and grants.

(f) SEMIANNUAL NOTICE IN FEDERAL REGISTER.—The Secretary of Defense shall publish in the Federal Register once every six months a list of each institution of higher education that is currently ineligible for contracts and grants by reason of a determination of the Secretary under subsection (a) or (b).

(Added P.L. 104–106, § 541(a), Feb. 10, 1996, 110 Stat. 315; amended in its entirety P.L. 106–65, § 549(a)(1), Oct. 5, 1999, 113 Stat. 609.)

§ 985. Persons convicted of capital crimes: denial of certain burial-related benefits

(a) PROHIBITION OF PERFORMANCE OF MILITARY HONORS.—The Secretary of a military department and the Secretary of Transportation, with respect to the Coast Guard when it is not operating as a service in the Navy, may not provide military honors at the funeral or burial of a person who has been convicted of a capital offense under Federal or State law for which the person was sentenced to death or life imprisonment without parole.

(b) DISQUALIFICATION FROM BURIAL IN MILITARY CEMETERIES.—A person convicted of a capital offense under Federal law is not entitled to or eligible for, and may not be provided, burial in—

(1) Arlington National Cemetery;

(2) the Soldiers' and Airmen's National Cemetery; or

(3) any other cemetery administered by the Secretary of a military department or the Secretary of Defense.

(c) DEFINITIONS.—In this section:

(1) The term "capital offense" means an offense for which the death penalty may be imposed.

(2) The term "burial" includes inurnment.

(3) The term "State" includes the District of Columbia and any commonwealth or territory of the United States.

(Added P.L. 105–85, § 1077(a)(1), Nov. 18, 1997, 111 Stat. 1914.)

§ 986. Security clearances: limitations

(a) PROHIBITION.—After the date of the enactment of this section, the Department of Defense may not grant or renew a security clearance for a person to whom this section applies who is described in subsection (c).

(b) COVERED PERSONS.—This section applies to the following persons:

(1) An officer or employee of the Department of Defense.

(2) A member of the Army, Navy, Air Force, or Marine Corps who is on active duty or is in an active status.

(3) An officer or employee of a contractor of the Department of Defense.

(c) PERSONS DISQUALIFIED FROM BEING GRANTED SECURITY CLEARANCES.—A person is described in this subsection if any of the following applies to that person:

(1) The person has been convicted in any court of the United States of a crime and sentenced to imprisonment for a term exceeding one year.

(2) The person is an unlawful user of, or is addicted to, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

(3) The person is mentally incompetent, as determined by a mental health professional approved by the Department of Defense.

(4) The person has been discharged or dismissed from the Armed Forces under dishonorable conditions.

(d) WAIVER AUTHORITY.—In a meritorious case, the Secretary of Defense or the Secretary of the military department concerned may authorize an exception to the prohibition in subsection (a) for a person described in paragraph (1) or (4) of subsection (c). The authority under the preceding sentence may not be delegated.

(e) ANNUAL REPORT.—Not later than February 1 each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report identifying each waiver issued under subsection (d) during the preceding year with an explanation for each case of the disqualifying factor in subsection (c) that applied, and the reason for the waiver of the disqualification.

(Added P.L. 106–398, § 1[1071(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–275.)

CHAPTER 50—MISCELLANEOUS COMMAND RESPONSIBILITIES

Sec.
991. Management of deployments of members.

§ 991. Management of deployments of members [1]

(a) GENERAL OR FLAG OFFICER RESPONSIBILITIES.—(1) The deployment (or potential deployment) of a member of the armed forces shall be managed, during any period when the member is a high-deployment days member, by the officer in the chain of command of that member who is the lowest-ranking general or flag officer in that chain of command. That officer shall ensure that the member is not deployed, or continued in a deployment, on any day on which the total number of days on which the member has been deployed out of the preceding 365 days would exceed 220. However, the member may be deployed, or continued in a deployment, without regard to the preceding sentence if such deployment, or continued deployment, is approved—

(A) in the case of a member who is assigned to a combatant command in a position under the operational control of the officer in that combatant command who is the service component commander for the members of that member's armed force in that combatant command, by that officer; and

(B) in the case of a member not assigned as described in subparagraph (A), by the service chief of that member's armed force (or, if so designated by that service chief, by an officer of the same armed force on active duty who is in the grade of general or admiral or who is the personnel chief for that armed force).

(2) In this section, the term "high-deployment days member" means a member who has been deployed 182 days or more out of the preceding 365 days.

(3) In paragraph (1)(B), the term "service chief" means the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, or the Commandant of the Marine Corps.

(b) DEPLOYMENT DEFINED.—(1) For the purposes of this section, a member of the armed forces shall be considered to be deployed or in a deployment on any day on which, pursuant to orders, the member is performing service in a training exercise or operation at a location or under circumstances that make it impossible or infeasible for the member to spend off-duty time in the housing

[1] Section 586(d)(1) of the National Defense Authorization Act for Fiscal Year 2000 (P.L. 106–65; 113 Stat. 639) provides:

(d) EFFECTIVE DATE.—(1) Section 991 of title 10, United States Code (as added by subsection (a)), shall take effect on October 1, 2000. No day on which a member of the Armed Forces is deployed (as defined in subsection (b) of that section) before that date may be counted in determining the number of days on which a member has been deployed for purposes of that section.

in which the member resides when on garrison duty at the member's permanent duty station or homeport, as the case may be.

(2) In the case of a member of a reserve component performing active service, the member shall be considered deployed or in a deployment for the purposes of paragraph (1) on any day on which, pursuant to orders that do not establish a permanent change of station, the member is performing the active service at a location that—

(A) is not the member's permanent training site; and

(B) is—

(i) at least 100 miles from the member's permanent residence; or

(ii) a lesser distance from the member's permanent residence that, under the circumstances applicable to the member's travel, is a distance that requires at least three hours of travel to traverse.

(3) For the purposes of this section, a member is not deployed or in a deployment when the member is—

(A) performing service as a student or trainee at a school (including any Government school);

(B) performing administrative, guard, or detail duties in garrison at the member's permanent duty station; or

(C) unavailable solely because of—

(i) a hospitalization of the member at the member's permanent duty station or homeport or in the immediate vicinity of the member's permanent residence; or

(ii) a disciplinary action taken against the member.

(4) The Secretary of Defense may prescribe a definition of deployment for the purposes of this section other than the definition specified in paragraphs (1) and (2). Any such definition may not take effect until 90 days after the date on which the Secretary notifies the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of the revised standard definition of deployment.

(c) RECORDKEEPING.—The Secretary of each military department shall establish a system for tracking and recording the number of days that each member of the armed forces under the jurisdiction of the Secretary is deployed.

(d) NATIONAL SECURITY WAIVER AUTHORITY.—The Secretary of the military department concerned may suspend the applicability of this section to a member or any group of members under the Secretary's jurisdiction when the Secretary determines that such a waiver is necessary in the national security interests of the United States.

(e) INAPPLICABILITY TO COAST GUARD.—This section does not apply to a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(Added P.L. 106–65, § 586(a), Oct. 5, 1999, 113 Stat. 637; P.L. 106–398, § 1[574(a), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–136.)

CHAPTER 51—RESERVE COMPONENTS: STANDARDS AND PROCEDURES FOR RETENTION AND PROMOTION

Sec.
1001. Reference to chapter 1219.
[1002. Transferred.]
[1003. Repealed.]
[1004 to 1007. Transferred.]

§ 1001. Reference to chapter 1219

Provisions of law relating to standards and procedures for retention and promotion of members of reserve components are set forth in chapter 1219 of this title (beginning with section 12641).

(Added P.L. 103–337, § 1662(h)(5), Oct. 5, 1994, 108 Stat. 2997.)

[Former § 1001 and § 1002. Transferred to §§ 12641 and 12642]

[§ 1003. Repealed. P.L. 103–337, § 1662(h)(3), Oct. 5, 1994, 108 Stat. 2996]

[§§ 1004 to 1007. Transferred to §§ 12644 to 12647]

CHAPTER 53—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.
1031. Administration of oath.
1032. Disability and death compensation: dependents of members held as captives.
1033. Participation in management of specified non-Federal entities: authorized activities.
1034. Protected communications; prohibition of retaliatory personnel actions.
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1055. Waiver of security deposits for members renting private housing; authority to indemnify landlord.
1056. Relocation assistance programs.
1057. Use of armed forces insignia on State license plates.
1058. Responsibilities of military law enforcement officials at scenes of domestic violence.
1059. Dependents of members separated for dependent abuse: transitional compensation; commissary and exchange benefits.
1060. Military service of retired members with newly democratic nations: consent of Congress.
1060a. Special supplemental food program.

§ 1031. Administration of oath

Any commissioned officer of any component of an armed force, whether or not on active duty, may administer any oath—

(1) required for the enlistment or appointment of any person in the armed forces; or

(2) required by law in connection with such an enlistment or appointment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 80.)

§ 1032. Disability and death compensation: dependents of members held as captives

(a) The President shall prescribe regulations under which the Secretary concerned may pay compensation for the disability or death of a dependent of a member of the uniformed services if the President determines that the disability or death—

(1) was caused by hostile action; and

(2) was a result of the relationship of the dependent to the member of the uniformed services.

(b) Any compensation otherwise payable to a person under this section in connection with any disability or death shall be reduced by any amount payable to such person under any other program funded in whole or in part by the United States in connection with such disability or death, except that nothing in this subsection shall result in the reduction of any amount below zero.

(c) A determination by the President under subsection (a) is conclusive and is not subject to judicial review.

(d) In this section:

(1) The term "dependent" has the meaning given that term in section 551 of title 37.

(2) The term "Secretary concerned" has the meaning given that term in section 101 of that title.

(Added as § 1051 P.L. 99–399, § 806(b)(1), Aug. 27, 1986, 100 Stat. 885; amended P.L. 99–661, § 1343(a)(25), Nov. 14, 1986, 100 Stat. 3994; redesignated § 1032 and transferred P.L. 100–26, § 7(e)(1)(A), April 21, 1987, 101 Stat. 281; amended P.L. 101–189, § 1622(e)(2), Nov. 29, 1989, 103 Stat. 1605.)

§ 1033. Participation in management of specified non-Federal entities: authorized activities

(a) AUTHORIZATION.—The Secretary concerned may authorize a member of the armed forces under the Secretary's jurisdiction to serve without compensation as a director, officer, or trustee, or to otherwise participate, in the management of an entity designated under subsection (b). Any such authorization shall be made on a case-by-case basis, for a particular member to participate in a specific capacity with a specific designated entity. Such authorization may be made only for the purpose of providing oversight and advice to, and coordination with, the designated entity, and participation of the member in the activities of the designated entity may not extend to participation in the day-to-day operations of the entity.

(b) DESIGNATED ENTITIES.—(1) The Secretary of Defense, and the Secretary of Transportation in the case of the Coast Guard when it is not operating as a service in the Navy, shall designate those entities for which authorization under subsection (a) may be provided. The list of entities so designated may not be revised more frequently than semiannually. In making such designations, the Secretary shall designate each military welfare society and may designate any other entity described in paragraph (3). No other entities may be designated.

(2) In this section, the term "military welfare society" means the following:

(A) Army Emergency Relief.

(B) Air Force Aid Society, Inc.

(C) Navy-Marine Corps Relief Society.

(D) Coast Guard Mutual Assistance.

(3) An entity described in this paragraph is an entity that is not operated for profit and is any of the following:

(A) An entity that regulates and supports the athletic programs of the service academies (including athletic conferences).

(B) An entity that regulates international athletic competitions.

(C) An entity that accredits service academies and other schools of the armed forces (including regional accrediting agencies).

(D) An entity that (i) regulates the performance, standards, and policies of military health care (including health care associations and professional societies), and (ii) has designated the position or capacity in that entity in which a member of the armed forces may serve if authorized under subsection (a).

(E) An entity that, operating in a foreign nation where United States military personnel are serving at United States military activities, promotes understanding and tolerance between such personnel (and their families) and the citizens of that host foreign nation through programs that foster social relations between those persons.

(c) PUBLICATION OF DESIGNATED ENTITIES AND OF AUTHORIZED PERSONS.—A designation of an entity under subsection (b), and an authorization under subsection (a) of a member of the armed forces to participate in the management of such an entity, shall be published in the Federal Register.

(d) REGULATIONS.—The Secretary of Defense, and the Secretary of Transportation in the case of the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section.

(Added P.L. 105–85, § 593(a)(1), Nov. 18, 1997, 111 Stat. 1762; amended P.L. 106–65, § 583, Oct. 5, 1999, 113 Stat. 634.)

§ 1034. Protected communications; prohibition of retaliatory personnel actions [1]

(a) RESTRICTING COMMUNICATIONS WITH MEMBERS OF CONGRESS AND INSPECTOR GENERAL PROHIBITED.—(1) No person may

[1] Section 843 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (P.L. 102–190; 105 Stat. 1449) provides:

SEC. 843. WHISTLEBLOWER PROTECTIONS FOR MEMBERS OF THE ARMED FORCES.

(a) REGULATIONS REQUIRED.—The Secretary of Defense shall prescribe regulations prohibiting members of the Armed Forces from taking or threatening to take any unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, as a reprisal against any member of the Armed Forces for making or preparing a lawful communication to any employee of the Department of Defense or any member of the Armed Forces who is assigned to or belongs to an organization which has as its primary responsibility audit, inspection, investigation, or enforcement of any law or regulation.

(b) VIOLATIONS BY PERSONS SUBJECT TO THE UCMJ.—The Secretary shall provide in the regulations that a violation of the prohibition by a person subject to chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is punishable as a violation of section 892 of such title (article 92 of the Uniform Code of Military Justice).

(c) [omitted].

restrict a member of the armed forces in communicating with a Member of Congress or an Inspector General.

(2) Paragraph (1) does not apply to a communication that is unlawful.

(b) PROHIBITATION OF RETALIATORY PERSONNEL ACTIONS.—(1) No person may take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of the armed forces for making or preparing—

(A) a communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted; or

(B) a communication that is described in subsection (c)(2) and that is made (or prepared to be made) to—

(i) a Member of Congress;

(ii) an Inspector General (as defined in subsection (i)) or any other Inspector General appointed under the Inspector General Act of 1978;

(iii) a member of a Department of Defense audit, inspection, investigation, or law enforcement organization; or

(iv) any other person or organization (including any person or organization in the chain of command) designated pursuant to regulations or other established administrative procedures for such communications.

(2) Any action prohibited by paragraph (1) (including the threat to take any action and the withholding or threat to withhold any favorable action) shall be considered for the purposes of this section to be a personnel action prohibited by this subsection.

(c) INSPECTOR GENERAL INVESTIGATION OF ALLEGATIONS OF PROHIBITED PERSONNEL ACTIONS.—(1) If a member of the armed forces submits to an Inspector General an allegation that a personnel action prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication described in paragraph (2), the Inspector General shall take the action required under paragraph (3).

(2) A communication described in this paragraph is a communication in which a member of the armed forces complains of, or discloses information that the member reasonably believes constitutes evidence of, any of the following:

(A) A violation of law or regulation, including a law or regulation prohibiting sexual harassment or unlawful discrimination.

(B) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(3)(A) An Inspector General receiving an allegation as described in paragraph (1) shall expeditiously determine, in accordance with regulations prescribed under subsection (h), whether there is sufficient evidence to warrant an investigation of the allegation.

(B) If the Inspector General receiving such an allegation is an Inspector General within a military department, that Inspector General shall promptly notify the Inspector General of the Depart-

ment of Defense of the allegation. Such notification shall be made in accordance with regulations prescribed under subsection (h).

(C) If an allegation under paragraph (1) is submitted to an Inspector General within a military department and if the determination of that Inspector General under subparagraph (A) is that there is not sufficient evidence to warrant an investigation of the allegation, that Inspector General shall forward the matter to the Inspector General of the Department of Defense for review.

(D) Upon determining that an investigation of an allegation under paragraph (1) is warranted, the Inspector General making the determination shall expeditiously investigate the allegation. In the case of a determination made by the Inspector General of the Department of Defense, that Inspector General may delegate responsibility for the investigation to an appropriate Inspector General within a military department.

(E) In the case of an investigation under subparagraph (D) within the Department of Defense, the results of the investigation shall be determined by, or approved by, the Inspector General of the Department of Defense (regardless of whether the investigation itself is conducted by the Inspector General of the Department of Defense or by an Inspector General within a military department).

(4) Neither an initial determination under paragraph (3)(A) nor an investigation under paragraph (3)(D) is required in the case of an allegation made more than 60 days after the date on which the member becomes aware of the personnel action that is the subject of the allegation.

(5) The Inspector General of the Department of Defense, or the Inspector General of the Department of Transportation (in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy), shall ensure that the Inspector General conducting the investigation of an allegation under this subsection is outside the immediate chain of command of both the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.

(d) INSPECTOR GENERAL INVESTIGATION OF UNDERLYING ALLEGATIONS.—Upon receiving an allegation under subsection (c), the Inspector General receiving the allegation shall conduct a separate investigation of the information that the member making the allegation believes constitutes evidence of wrongdoing (as described in subparagraph (A) or (B) of subsection (c)(2)) if there previously has not been such an investigation or if the Inspector General determines that the original investigation was biased or otherwise inadequate. In the case of an allegation received by the Inspector General of the Department of Defense, the Inspector General may delegate that responsibility to the Inspector General of the armed force concerned.

(e) REPORTS ON INVESTIGATIONS.—(1) After completion of an investigation under subsection (c) or (d) or, in the case of an investigation under subsection (c) by an Inspector General within a military department, after approval of the report of that investigation under subsection (c)(3)(E), the Inspector General conducting the investigation shall submit a report on the results of the investigation to the Secretary of Defense (or to the Secretary of Transportation in the case of a member of the Coast Guard when the Coast

Guard is not operating as a service in the Navy) and shall transmit a copy of the report on the results of the investigation to the member of the armed forces who made the allegation investigated. The report shall be transmitted to the Secretary, and the copy of the report shall be transmitted to the member, not later than 30 days after the completion of the investigation or, in the case of an investigation under subsection (c) by an Inspector General within a military department, after approval of the report of that investigation under subsection (c)(3)(E).

(2) In the copy of the report transmitted to the member, the Inspector General shall ensure the maximum disclosure of information possible, with the exception of information that is not required to be disclosed under section 552 of title 5. However, the copy need not include summaries of interviews conducted, nor any document acquired, during the course of the investigation. Such items shall be transmitted to the member, if the member requests the items, with the copy of the report or after the transmittal to the member of the copy of the report, regardless of whether the request for those items is made before or after the copy of the report is transmitted to the member.

(3) If, in the course of an investigation of an allegation under this section, the Inspector General determines that it is not possible to submit the report required by paragraph (1) within 180 days after the date of receipt of the allegation being investigated, the Inspector General shall provide to the Secretary of Defense (or to the Secretary of Transportation in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) and to the member making the allegation a notice—

(A) of that determination (including the reasons why the report may not be submitted within that time); and

(B) of the time when the report will be submitted.

(4) The report on the results of the investigation shall contain a thorough review of the facts and circumstances relevant to the allegation and the complaint or disclosure and shall include documents acquired during the course of the investigation, including summaries of interviews conducted. The report may include a recommendation as to the disposition of the complaint.

(f) CORRECTION OF RECORDS WHEN PROHIBITED ACTION TAKEN.—(1) A board for the correction of military records acting under section 1552 of this title, in resolving an application for the correction of records made by a member or former member of the armed forces who has alleged a personnel action prohibited by subsection (b), on the request of the member or former member or otherwise, may review the matter.

(2) In resolving an application described in paragraph (1), a correction board—

(A) shall review the report of the Inspector General submitted under subsection (e)(1);

(B) may request the Inspector General to gather further evidence; and

(C) may receive oral argument, examine and cross-examine witnesses, take depositions, and, if appropriate, conduct an evidentiary hearing.

(3) If the board elects to hold an administrative hearing, the member or former member who filed the application described in paragaph (1)—

(A) may be provided with representation by a judge advocate if—

(i) the Inspector General, in the report under subsection (e)(1), finds that there is probable cause to believe that a personnel action prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication described in subsection (c)(2);

(ii) the Judge Advocate General concerned determines that the case is unusually complex or otherwise requires judge advocate assistance to ensure proper presentation of the legal issues in the case; and

(iii) the member is not represented by outside counsel chosen by the member; and

(B) may examine witnesses through deposition, serve interrogatories, and request the production of evidence, including evidence contained in the investigatory record of the Inspector General but not included in the report submitted under subsection (e)(1).

(4) The Secretary concerned shall issue a final decision with respect to an application described in paragraph (1) within 180 days after the application is filed. If the Secretary fails to issue such a final decision within that time, the member or former member shall be deemed to have exhausted the member's or former member's administrative remedies under section 1552 of this title.

(5) The Secretary concerned shall order such action, consistent with the limitations contained in sections 1552 and 1553 of this title, as is necessary to correct the record of a personnel action prohibited by subsection (b).

(6) If the Board determines that a personnel action prohibited by subsection (b) has occurred, the Board may recommend to the Secretary concerned that the Secretary take appropriate disciplinary action against the individual who committed such personnel action.

(g) REVIEW BY SECRETARY OF DEFENSE.—Upon the completion of all administrative review under subsection (f), the member or former member of the armed forces (except for a member or former member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) who made the allegation referred to in subsection (c)(1), if not satisfied with the disposition of the matter, may submit the matter to the Secretary of Defense. The Secretary shall make a decision to reverse or uphold the decision of the Secretary of the military department concerned in the matter within 90 days after receipt of such a submittal.

(h) REGULATIONS.—The Secretary of Defense, and the Secretary of Transportation 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.

(i) DEFINITIONS.—In this section:

(1) The term "Member of Congress" includes any Delegate or Resident Commissioner to Congress.

(2) The term "Inspector General" means any of the following:

(A) The Inspector General of the Department of Defense.

(B) The Inspector General of the Department of Transportation, in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(C) Any officer of the armed forces or employee of the Department of Defense who is assigned or detailed to serve as an Inspector General at any level in the Department of Defense.

(3) The term "unlawful discrimination" means discrimination on the basis of race, color, religion, sex, or national origin.

(Aug. 10, 1956, ch. 1041, 70A Stat. 80; Oct 19, 1984, P.L. 98–525, § 1405(19), 98 Stat. 2622; revised in its entirety P.L. 100–456, § 846(a), Sept. 29, 1988, 102 Stat. 2027; P.L. 101–225, § 202, Dec. 12, 1989, 103 Stat. 1910; P.L. 103–337, § 531(a)–(g), Oct. 5, 1994, 108 Stat. 2756–2758; P.L. 105–261, § 933, Oct. 17, 1998, 112 Stat. 2107; P.L. 106–398, § 1[903], Oct. 30, 2000, 114 Stat. 1654, 1654A–224.)

§ 1035. Deposits of savings

(a) Under joint regulations prescribed by the Secretaries concerned, a member of the armed forces who is on a permanent duty assignment outside the United States or its possessions may deposit during that tour of duty not more than his unallotted current pay and allowances in amounts of $5 or more, with any branch, office, or officer of a uniformed service. Amounts so deposited shall be deposited in the Treasury and kept as a separate fund, and shall be accounted for in the same manner as public funds.

(b) Interest at a rate prescribed by the President, not to exceed 10 percent a year, will accrue on amounts deposited under this section. However, the maximum amount upon which interest may be paid under this subsection to any member is $10,000, except that such limitation shall not apply to deposits made on or after September 1, 1966, in the case of those members in a missing status, during the Vietnam conflict, the Persian Gulf conflict, or a contingency operation. Interest under this subsection shall terminate 90 days after the member's return to the United States or its possessions.

(c) Except as provided in joint regulations prescribed by the Secretaries concerned, payments of deposits, and interest thereon, may not be made to the member while he is on duty outside the United States or its possessions.

(d) An amount deposited under this section, with interest thereon, is exempt from liability for the member's debts, including any indebtedness to the United States or any instrumentality thereof, and is not subject to forfeiture by sentence of a court-martial.

(e) The Secretary concerned, or his designee, may in the interest of a member who is in a missing status or his dependents, initiate, stop, modify, and change allotments, and authorize a withdrawal of deposits, made under this section, even though the member had an opportunity to deposit amounts under this section and elected not to do so. Interest may be computed from the day the

member entered a missing status, or September 1, 1966, whichever is later.

(f) The Secretary of Defense may authorize a member of the armed forces who is on a temporary duty assignment outside of the United States or its possessions in support of a contingency operation to make deposits of unallotted current pay and allowances during that duty as provided in subsection (a). The Secretary shall prescribe regulations establishing standards and procedures for the administration of this subsection.

(g) In this section:

(1) The term "missing status" has the meaning given that term in section 551(2) of title 37.

(2) The term "Vietnam conflict" means the period beginning on February 28, 1961, and ending on May 7, 1975.

(3) The term "Persian Gulf conflict" means the period beginning on January 16, 1991, and ending on the date thereafter prescribed by Presidential proclamation or by law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 80; Aug. 14, 1966, P.L. 89–538, § 1(1), 80 Stat. 347; Nov. 3, 1967, P.L. 90–122, § 1, 81 Stat. 361; Feb. 26, 1970, P.L. 91–200, 84 Stat. 16; Oct. 19, 1984, P.L. 98–525, § 1405(20), 98 Stat. 2623; Nov. 14, 1986, P.L. 99–661, § 1343(a)(3), 100 Stat. 3992; April 6, 1991, P.L. 102–25, § 310, 105 Stat. 84; Dec. 5, 1991, P.L. 102–190, § 639, 105 Stat. 1384.)

§ 1036. Escorts for dependents of members: transportation and travel allowances

Under regulations to be prescribed by the Secretary concerned, round trip transportation and travel allowances may be paid to any person for travel performed or to be performed under competent orders as an escort for dependents of a member of the armed forces, if the travel is performed not later than one year after the member—

(1) dies;

(2) is missing; or

(3) is otherwise unable to accompany his dependents;

and it has been determined that travel by the dependents is necessary and that they are incapable of traveling alone because of age, mental or physical incapacity, or other extraordinary circumstances. Such allowances may be paid in advance.

(Added P.L. 86–160, § 1(1), Aug. 14, 1959, 73 Stat. 358; amended P.L. 98–94, § 913, Sept. 24, 1983, 97 Stat. 640.)

§ 1037. Counsel before foreign judicial tribunals and administrative agencies; court costs and bail

(a) Under regulations to be prescribed by him, the Secretary concerned may employ counsel, and pay counsel fees, court costs, bail, and other expenses incident to the representation, before the judicial tribunals and administrative agencies of any foreign nation, of persons subject to the Uniform Code of Military Justice and of persons not subject to the Uniform Code of Military Justice who are employed by or accompanying the armed forces in an area outside the United States and the territories and possessions of the United States, the Northern Mariana Islands, and the Commonwealth of Puerto Rico. So far as practicable, these regulations shall be uniform for all armed forces.

(b) The person on whose behalf a payment is made under this section is not liable to reimburse the United States for that payment, unless he is responsible for forfeiture of bail provided under subsection (a).

(c) Appropriations available to the military department concerned or the Department of Transportation, as the case may be, for the pay of persons under its jurisdiction may be used to carry out this section.

(Added P.L. 85–861, § 1(24)(A), Sept. 2, 1958, 72 Stat. 1445; amended P.L. 96–513, § 511(31), Dec. 12, 1980, 94 Stat. 2922; P.L. 99–145, § 681, Nov. 8, 1985, 99 Stat. 665.)

§ 1038. Service credit: certain service in Women's Army Auxiliary Corps

In computing years of active service of any female member of the armed forces, there shall be credited for all purposes, except the right to promotion, in addition to any other service that may be credited, all active service performed in the Women's Army Auxiliary Corps after May 13, 1942, and before September 30, 1943, if that member performed active service in the armed forces after September 29, 1943. Service as an officer in the Women's Army Auxiliary Corps shall be credited as active service in the status of a commissioned officer, and service as an enrolled member of the Corps shall be credited as active service in the status of an enlisted member.

(Added P.L. 86–142, § 1(1), Aug. 7, 1959, 73 Stat. 289.)

§ 1039. Crediting of minority service

For the purpose of determining eligibility for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve, entitlement to retired or retainer pay, and years of service in computing retired or retainer pay of a member of the armed forces, any service which would be creditable but for the fact that it was performed by him under an enlistment or induction entered into before he attained the age prescribed by law for that enlistment or induction, shall be credited.

(Added P.L. 87–165, § 1(1), Aug. 25, 1961, 75 Stat. 401.)

§ 1040. Transportation of dependent patients

(a) Except as provided in subsection (b), if a dependent accompanying a member of the uniformed services who is stationed outside the United States or in Alaska or Hawaii and who is on active duty for a period of more than 30 days requires medical attention which is not available in the locality, transportation of the dependents at the expense of the United States is authorized to the nearest appropriate medical facility in which adequate medical care is available. On his recovery or when it is administratively determined that the patient should be removed from the medical facility involved, the dependent may be transported at the expense of the United States to the duty station of the member or to such other place determined to be appropriate under the circumstances. If a dependent is unable to travel unattended, round-trip transportation and travel expenses may be furnished necessary attendants. In addition to transportation of a dependent at the expense of the United States authorized under this subsection, reasonable travel

expenses incurred in connection with the transportation of the dependent may be paid at the expense of the United States. Travel expenses authorized by this section may include reimbursement for necessary local travel in the vicinity of the medical facility involved. The transportation and travel expenses authorized by this section may be paid in advance.

(b) This section does not authorize transportation and travel expenses for a dependent for elective surgery which is determined to be not medically indicated by a medical authority designated under joint regulations to be prescribed under this section.

(c) In this section, the term "dependent" has the meaning given that term in section 1072 of this title.

(d) Transportation and travel expenses authorized by this section shall be furnished in accordance with joint regulations to be prescribed by the Secretary of Transportation, the Secretary of Defense, the Secretary of Commerce, and the Secretary of Health and Human Services, which shall require the use of transportation facilities of the United States insofar as practicable.

(Added P.L. 89–140, § 1(1), Aug. 28, 1965, 79 Stat. 579; amended P.L. 96–513, § 511(32), Dec. 12, 1980, 94 Stat. 2922; P.L. 98–94, § 913, Sept. 24, 1983, 97 Stat. 640; P.L. 98–525, § 611, § 1405(21), Oct. 19, 1984, 98 Stat. 2538, 2623; P.L. 99–348, § 304(a)(2), July 1, 1986, 100 Stat. 703; P.L. 99–661, § 616(a), Nov. 14, 1986, 100 Stat. 3880.)

§ 1041. Replacement of certificate of discharge

If satisfactory proof is presented that a person who has discharged honorably or under honorable conditions has lost his certificate of discharge from an armed force or that it was destroyed without his procurement or connivance, the Secretary concerned may give that person, or his surviving spouse, a certificate of that discharge, indelibly marked to show that it is a certificate in place of the lost or destroyed certificate. A certificate given under this section may not be accepted as a voucher for the payment of a claim against the United States for pay, bounty, or other allowance, or as evidence in any other case.

(Added as § 1040 by P.L. 90–235, § 7(a)(2)(A), Jan. 2, 1968, 81 Stat. 762; redesignated § 1041, P.L. 96–513, § 511(33)(A), Dec. 12, 1980, 94 Stat. 2922.)

§ 1042. Copy of certificate of service

A fee for a copy of a certificate showing service in the armed forces may not be charged to—

(1) a person discharged or released from the armed forces honorably or under honorable conditions;

(2) the next of kin of the person; or

(3) a legal representative of the person.

(Added P.L. 97–258, § 2(b)(2)(B), Sept. 13, 1982, 96 Stat. 1052.)

§ 1043. Service credit: service in the National Oceanic and Atmospheric Administration or the Public Health Service

Active commissioned service in the National Oceanic and Atmospheric Administration or the Public Health Service shall be credited as active commissioned service in the armed forces for purposes of determining the retirement eligibility and computing the retired pay of a member of the armed forces.

(Added P.L. 98–94, § 1007(b)(1), Sept. 24, 1983, 97 Stat. 662.)

§ 1044. Legal assistance

(a) Subject to the availability of legal staff resources, the Secretary concerned may provide legal assistance in connection with their personal civil legal affairs to the following persons:

(1) Members of the armed forces who are on active duty.

(2) Members and former members entitled to retired or retainer pay or equivalent pay.

(3) Officers of the commissioned corps of the Public Health Service who are on active duty or entitled to retired or equivalent pay.

(4) Members of reserve components not covered by paragraph (1) or (2) following release from active duty under a call or order to active duty for more than 30 days issued under a mobilization authority (as determined by the Secretary of Defense), for a period of time, prescribed by the Secretary of Defense, that begins on the date of the release and is not less than twice the length of the period served on active duty under that call or order to active duty.

(5) Dependents of members and former members described in paragraphs (1), (2), (3), and (4).

(b) Under such regulations as may be prescribed by the Secretary concerned, the Judge Advocate General (as defined in section 801(1) of this title) under the jurisdiction of the Secretary is responsible for the establishment and supervision of legal assistance programs under this section.

(c) This section does not authorize legal counsel to be provided to represent a member or former member of the uniformed services described in subsection (a), or the dependent of such a member or former member, in a legal proceeding if the member or former member can afford legal fees for such representation without undue hardship.

(d) The Secretary concerned shall define "dependent" for the purposes of this section.

(Added P.L. 98–525, § 651, Oct. 19, 1984, 98 Stat. 2549; amended P.L. 104–210, § 583, Sept. 23, 1996, 110 Stat. 2538; P.L. 106–398, § 1[524(a), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–108.)

§ 1044a. Authority to act as notary

(a) The persons named in subsection (b) have the general powers of a notary public and of a consul of the United States in the performance of all notarial acts to be executed by any of the following:

(1) Members of any of the armed forces.

(2) Other persons eligible for legal assistance under the provisions of section 1044 of this title or regulations of the Department of Defense.

(3) Persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(4) Other persons subject to the Uniform Code of Military Justice (chapter 47 of this title) outside the United States.

(b) Persons with the powers described in subsection (a) are the following:

(1) All judge advocates, including reserve judge advocates when not in a duty status.

(2) All civilian attorneys serving as legal assistance officers.

(3) All adjutants, assistant adjutants, and personnel adjutants, including reserve members when not in a duty status.

(4) All other members of the armed forces, including reserve members when not in a duty status, who are designated by regulations of the armed forces or by statute to have those powers.

(c) No fee may be paid to or received by any person for the performance of a notarial act authorized in this section.

(d) The signature of any such person acting as notary, together with the title of that person's offices, is prima facie evidence that the signature is genuine, that the person holds the designated title, and that the person is authorized to perform a notarial act.

(Added P.L. 101–510, § 551(a)(1), Nov. 5, 1990, 104 Stat. 1566; amended P.L. 104–201, § 573, Sept. 23, 1996, 110 Stat. 2534.)

§ 1044b. Military powers of attorney: requirement for recognition by States

(a) INSTRUMENTS TO BE GIVEN LEGAL EFFECT WITHOUT REGARD TO STATE LAW.—A military power of attorney—

(1) is exempt from any requirement of form, substance, formality, or recording that is provided for powers of attorney under the laws of a State; and

(2) shall be given the same legal effect as a power of attorney prepared and executed in accordance with the laws of the State concerned.

(b) MILITARY POWER OF ATTORNEY.—For purposes of this section, a military power of attorney is any general or special power of attorney that is notarized in accordance with section 1044a of this title or other applicable State or Federal law.

(c) STATEMENT TO BE INCLUDED.—(1) Under regulations prescribed by the Secretary concerned, each military power of attorney shall contain a statement that sets forth the provisions of subsection (a).

(2) Paragraph (1) shall not be construed to make inapplicable the provisions of subsection (a) to a military power of attorney that does not include a statement described in that paragraph.

(d) STATE DEFINED.—In this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and a possession of the United States.

(Added P.L. 103–160, § 574(a), Nov. 30, 1993, 107 Stat. 1674.)

§ 1044c. Advance medical directives of members and dependents: requirement for recognition by States

(a) INSTRUMENTS TO BE GIVEN LEGAL EFFECT WITHOUT REGARD TO STATE LAW.—An advance medical directive executed by a person eligible for legal assistance—

(1) is exempt from any requirement of form, substance, formality, or recording that is provided for advance medical directives under the laws of a State; and

(2) shall be given the same legal effect as an advance medical directive prepared and executed in accordance with the laws of the State concerned.

(b) ADVANCE MEDICAL DIRECTIVES.—For purposes of this section, an advance medical directive is any written declaration that—

(1) sets forth directions regarding the provision, withdrawal, or withholding of life-prolonging procedures, including hydration and sustenance, for the declarant whenever the declarant has a terminal physical condition or is in a persistent vegetative state; or

(2) authorizes another person to make health care decisions for the declarant, under circumstances stated in the declaration, whenever the declarant is incapable of making informed health care decisions.

(c) STATEMENT TO BE INCLUDED.—(1) Under regulations prescribed by the Secretary concerned, an advance medical directive prepared by an attorney authorized to provide legal assistance shall contain a statement that sets forth the provisions of subsection (a).

(2) Paragraph (1) shall not be construed to make inapplicable the provisions of subsection (a) to an advance medical directive that does not include a statement described in that paragraph.

(d) STATES NOT RECOGNIZING ADVANCE MEDICAL DIRECTIVES.—Subsection (a) does not make an advance medical directive enforceable in a State that does not otherwise recognize and enforce advance medical directives under the laws of the State.

(e) DEFINITIONS.—In this section:

(1) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and a possession of the United States.

(2) The term "person eligible for legal assistance" means a person who is eligible for legal assistance under section 1044 of this title.

(3) The term "legal assistance" means legal services authorized under section 1044 of this title.

(Added P.L. 104–106, § 749(a)(1), Feb. 10, 1996, 110 Stat. 388.)

§ 1044d. Military testamentary instruments: requirement for recognition by States

(a) TESTAMENTARY INSTRUMENTS TO BE GIVEN LEGAL EFFECT.—A military testamentary instrument—

(1) is exempt from any requirement of form, formality, or recording before probate that is provided for testamentary instruments under the laws of a State; and

(2) has the same legal effect as a testamentary instrument prepared and executed in accordance with the laws of the State in which it is presented for probate.

(b) MILITARY TESTAMENTARY INSTRUMENTS.—For purposes of this section, a military testamentary instrument is an instrument that is prepared with testamentary intent in accordance with regulations prescribed under this section and that—

(1) is executed in accordance with subsection (c) by (or on behalf of) a person, as a testator, who is eligible for military legal assistance;

(2) makes a disposition of property of the testator; and

(3) takes effect upon the death of the testator.

(c) REQUIREMENTS FOR EXECUTION OF MILITARY TESTAMENTARY INSTRUMENTS.—An instrument is valid as a military testamentary instrument only if—

(1) the instrument is executed by the testator (or, if the testator is unable to execute the instrument personally, the instrument is executed in the presence of, by the direction of, and on behalf of the testator);

(2) the instrument is executed in the presence of a military legal assistance counsel acting as presiding attorney;

(3) the instrument is executed in the presence of at least two disinterested witnesses (in addition to the presiding attorney), each of whom attests to witnessing the testator's execution of the instrument by signing it; and

(4) the instrument is executed in accordance with such additional requirements as may be provided in regulations prescribed under this section.

(d) SELF-PROVING MILITARY TESTAMENTARY INSTRUMENTS.—(1) If the document setting forth a military testamentary instrument meets the requirements of paragraph (2), then the signature of a person on the document as the testator, an attesting witness, a notary, or the presiding attorney, together with a written representation of the person's status as such and the person's military grade (if any) or other title, is prima facie evidence of the following:

(A) That the signature is genuine.

(B) That the signatory had the represented status and title at the time of the execution of the will.

(C) That the signature was executed in compliance with the procedures required under the regulations prescribed under subsection (f).

(2) A document setting forth a military testamentary instrument meets the requirements of this paragraph if it includes (or has attached to it), in a form and content required under the regulations prescribed under subsection (f), each of the following:

(A) A certificate, executed by the testator, that includes the testator's acknowledgment of the testamentary instrument.

(B) An affidavit, executed by each witness signing the testamentary instrument, that attests to the circumstances under which the testamentary instrument was executed.

(C) A notarization, including a certificate of any administration of an oath required under the regulations, that is signed by the notary or other official administering the oath.

(e) STATEMENT TO BE INCLUDED.—(1) Under regulations prescribed under this section, each military testamentary instrument shall contain a statement that sets forth the provisions of subsection (a).

(2) Paragraph (1) shall not be construed to make inapplicable the provisions of subsection (a) to a testamentary instrument that does not include a statement described in that paragraph.

(f) REGULATIONS.—Regulations for the purposes of this section shall be prescribed jointly by the Secretary of Defense and by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Department of the Navy.

(g) DEFINITIONS.—In this section:

(1) The term "person eligible for military legal assistance" means a person who is eligible for legal assistance under section 1044 of this title.

(2) The term "military legal assistance counsel" means—

(A) a judge advocate (as defined in section 801(13) of this title); or

(B) a civilian attorney serving as a legal assistance officer under the provisions of section 1044 of this title.

(3) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and each possession of the United States.

(Added P.L. 106–398, § 1[551(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–123.)

§ 1045. Voluntary withholding of State income tax from retired or retainer pay

(a) The Secretary concerned shall enter into an agreement under this section with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Secretary concerned shall withhold State income tax from the monthly retired or retainer pay of any member or former member entitled to such pay who voluntarily requests such withholding in writing. The amount withheld during any calendar quarter shall be retained by the Secretary concerned and disbursed to the States during the month following that calendar quarter.

(b) A member or former member may request that the State designated for withholding be changed and that the withholdings be remitted in accordance with such change. A member or former member also may revoke any request of such member or former member for withholding. Any request for a change in the State designated and any revocation is effective on the first day of the month after the month in which the request or revocation is processed by the Secretary concerned, but in no event later than on the first day of the second month beginning after the day on which the request or revocation is received by the Secretary concerned.

(c) A member or former member may have in effect at any time only one request for withholding under this section and may not have more than two such requests in effect during any one calendar year.

(d)(1) This section does not give the consent of the United States to the application of a statute that imposes more burdensome requirements on the United States than on employers generally or that subjects the United States or any member or former member entitled to retired or retainer pay to a penalty or liability because of this section.

(2) The Secretary concerned may not accept pay from a State for services performed in withholding State income taxes from retired or retainer pay.

(3) Any amount erroneously withheld from retired or retainer pay and paid to a State by the Secretary concerned shall be repaid by the State in accordance with regulations prescribed by the Secretary concerned:

(e) In this section:

(1) The term "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(2) The term "Secretary concerned" includes the Secretary of Health and Human Services with respect to the commissioned corps of the Public Health Service and the Secretary of Commerce with respect to the commissioned corps of the National Oceanic and Atmospheric Administration.

(Added P.L. 98–525, § 654, Oct. 19, 1984, 98 Stat. 2551; amended P.L. 100–26, § 7(k)(2), April 21, 1987, 101 Stat. 284.)

§ 1046. Overseas temporary foster care program

(a) PROGRAM AUTHORIZED.—The Secretary concerned may establish a program to provide temporary foster care services outside the United States for children accompanying members of the armed forces on duty at stations outside the United States. The foster care services provided under such a program shall be similar to those services provided by State and local governments in the United States.

(b) EXPENSES.—Under regulations prescribed by the Secretary concerned, the expenses related to providing foster care services under subsection (a) may be paid from appropriated funds available to the Secretary.

(Added P.L. 102–484, § 653(a), Oct. 23, 1992, 106 Stat. 2425.)

§ 1047. Allowance for civilian clothing

The Secretary of the military department concerned may furnish civilian clothing, at a cost of not more than $40, to an enlisted member who is—

(1) discharged for misconduct or unsuitability or under conditions other than honorable;

(2) sentenced by a civil court to confinement in a prison;

(3) interned or discharged as an alien enemy; or

(4) discharged before completion of recruit training under honorable conditions for dependency, hardship, minority, or disability or for the convenience of the Government.

(Added P.L. 98–525, § 1401(d), Oct. 19, 1984, 98 Stat. 2615.)

§ 1048. Gratuity payment to persons discharged for fraudulent enlistment

The Secretary concerned may pay a gratuity of not to exceed $25 to a person discharged for fraudulent enlistment.

(Added P.L. 98–525, § 1401(d), Oct. 19, 1984, 98 Stat. 2616.)

§ 1049. Subsistence: miscellaneous persons

The following persons may be provided subsistence at the expense of the United States:

(1) Enlisted members while sick in hospitals.

(2) Applicants for enlistment and selective service registrants called for induction.

(3) Prisoners.

(4) Civilian employees, as authorized by law.

(5) Supernumeraries, when necessitated by emergent military circumstances.

(Added P.L. 98–525, § 1401(d), Oct. 19, 1984, 98 Stat. 2616.)

§ 1050. Latin American cooperation: payment of personnel expenses

The Secretary of Defense or the Secretary of a military department may pay the travel, subsistence, and special compensation of officers and students of Latin American countries and other expenses that the Secretary considers necessary for Latin American cooperation.

(Added P.L. 98–525, § 1401(d), Oct. 19, 1984, 98 Stat. 2616; amended P.L. 105–261, § 905(b), Oct. 17, 1998, 112 Stat. 2093.)

§ 1051. Bilateral or regional cooperation programs: payment of personnel expenses

(a) The Secretary of Defense may pay the travel, subsistence, and similar personal expenses of defense personnel of developing countries in connection with the attendance of such personnel at a bilateral or regional conference, seminar, or similar meeting if the Secretary determines that the attendance of such personnel at such conference, seminar, or similar meeting is in the national security interests of the United States.

(b)(1) Except as provided in paragraph (2), expenses authorized to be paid under subsection (a) may be paid on behalf of personnel from a developing country only in connection with travel within the area of responsibility of the unified combatant command (as such term is defined in section 161(c) of this title) in which the developing country is located or in connection with travel to Canada or Mexico.

(2) In a case in which the headquarters of a unified combatant command is located within the United States, expenses authorized to be paid under subsection (a) may be paid in connection with travel of personnel to the United States to attend a bilateral or regional conference, seminar, or similar meeting.

(3) Expenses authorized to be paid under subsection (a) may not, in the case of any individual, exceed the amount that would be paid under chapter 7 of title 37 to a member of the armed forces of the United States (of a comparable grade) for authorized travel of a similar nature.

(c) In addition to the expenses authorized to be paid under subsection (a), the Secretary of Defense may pay such other expenses in connection with any such conference, seminar, or similar meeting as the Secretary considers in the national security interests of the United States.

(d) The authority to pay expenses under this section is in addition to the authority to pay certain expenses and compensation of officers and students of Latin American countries under section 1050 of this title.

(Added P.L. 99–661, § 1322(a), Nov. 14, 1986, 100 Stat. 3989; amended P.L. 101–189, § 936, Nov. 29, 1989, 103 Stat. 1538; P.L. 101–510, § 1301(5), Nov. 5, 1990, 104 Stat. 1668; P.L. 102–484, § 1362, Oct. 23, 1992, 106 Stat. 2560.)

§ 1052. Adoption expenses: reimbursement

(a) AUTHORIZATION TO REIMBURSE.—The Secretary of Defense shall carry out a program under which a member of the armed forces may be reimbursed, as provided in this section, for qualifying adoption expenses incurred by the member in the adoption of a child under 18 years of age.

(b) ADOPTIONS COVERED.—An adoption for which expenses may be reimbursed under this section includes an adoption by a single person, an infant adoption, an intercountry adoption, and an adoption of a child with special needs (as defined in section 473(c) of the Social Security Act (42 U.S.C. 673(c))).

(c) BENEFITS PAID AFTER ADOPTION IS FINAL.—Benefits paid under this section in the case of an adoption may be paid only after the adoption is final.

(d) TREATMENT OF OTHER BENEFITS.—A benefit may not be paid under this section for any expense paid to or for a member of the armed forces under any other adoption benefits program administered by the Federal Government or under any such program administered by a State or local government.

(e) LIMITATIONS.—(1) Not more than $2,000 may be paid under this section to a member of the armed forces, or to two such members who are spouses of each other, for expenses incurred in the adoption of a child.

(2) Not more than $5,000 may be paid under this section to a member of the armed forces, or to two such members who are spouses of each other, for adoptions by such member (or members) in any calendar year.

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(g) DEFINITIONS.—In this section:

(1) The term "qualifying adoption expenses" means reasonable and necessary expenses that are directly related to the legal adoption of a child under 18 years of age, but only if such adoption is arranged by a qualified adoption agency. Such term does not include any expense incurred—

(A) by an adopting parent for travel; or

(B) in connection with an adoption arranged in violation of Federal, State, or local law.

(2) The term "reasonable and necessary expenses" includes—

(A) public and private agency fees, including adoption fees charged by an agency in a foreign country;

(B) placement fees, including fees charged adoptive parents for counseling;

(C) legal fees (including court costs) in connection with services that are unavailable to a member of the armed forces under section 1044 or 1044a of this title; and

(D) medical expenses, including hospital expenses of the biological mother of the child to be adopted and of a newborn infant to be adopted.

(3) The term "qualified adoption agency" means any of the following:

(A) A State or local government agency which has responsibility under State or local law for child placement through adoption.

(B) A nonprofit, voluntary adoption agency which is authorized by State or local law to place children for adoption.

(C) Any other source authorized by a State to provide adoption placement if the adoption is supervised by a court under State or local law.

(Added P.L. 102–190, § 651(a)(1), Dec. 5, 1991, 105 Stat. 1385; amended P.L. 102–484, § 1052(12), Oct. 23, 1992, 106 Stat. 2499; P.L. 104–201, § 652(a), Sept. 23, 1996, 110 Stat. 2582; P.L. 106–398, § 1[579(c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–141.)

§ 1053. Financial institution charges incurred because of Government error in direct deposit of pay: reimbursement

(a)(1) A member of the armed forces (or a former member of the armed forces entitled to retired pay under chapter 1223 of this title) who, in accordance with law or regulation, participates in a program for the automatic deposit of pay to a financial institution may be reimbursed by the Secretary concerned for a covered late-deposit charge.

(2) A covered late-deposit charge for purposes of paragraph (1) is a charge (including an overdraft charge or a minimum balance or average balance charge) that is levied by a financial institution and that results from an administrative or mechanical error on the part of the Government that causes the pay of the person concerned to be deposited late or in an incorrect manner or amount.

(b) Reimbursements under this section shall be made from appropriations available for the pay and allowances of members of the armed force concerned.

(c) The Secretaries concerned shall prescribe regulations to carry out this section, including regulations for the manner in which reimbursement under this section is to be made.

(d) In this section:

"(1) The term 'financial institution' means a bank, savings and loan association, or similar institution or a credit union chartered by the United States or a State.".

(2) The term "pay" includes (A) retired pay, and (B) allowances.

(Added P.L. 99–661, § 662(a), Nov. 14, 1986, 100 Stat. 3893; amended P.L. 101–189, § 664(a), Nov. 29, 1989, 103 Stat. 1466; P.L. 102–25, § 701(e)(8), April 6, 1991, 105 Stat. 115; P.L. 104–106, § 1501(c)(8), Feb. 10, 1996, 110 Stat. 499; P.L. 105–261, § 564(a), Oct. 17, 1998, 112 Stat. 2029; P.L. 106–398, § 1[579(c)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–141.)

§ 1053a. Expenses incurred in connection with leave canceled due to contingency operations: reimbursement

(a) AUTHORIZATION TO REIMBURSE.—The Secretary concerned may reimburse a member of the armed forces under the jurisdiction of the Secretary for travel and related expenses (to the extent not otherwise reimbursable under law) incurred by the member as a result of the cancellation of previously approved leave when the leave is canceled in connection with the member's participation in

a contingency operation and the cancellation occurs within 48 hours of the time the leave would have commenced.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations to establish the criteria for the applicability of subsection (a).

(c) CONCLUSIVENESS OF SETTLEMENT.—The settlement of an application for reimbursement under subsection (a) is final and conclusive.

(Added P.L. 106–398, § 1[579(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–141.)

§ 1054. Defense of certain suits arising out of legal malpractice

(a) The remedy against the United States provided by sections 1346(b) and 2672 of title 28 for damages for injury or loss of property caused by the negligent or wrongful act or omission of any person who is an attorney, paralegal, or other member of a legal staff within the Department of Defense (including the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32) or within the Coast Guard, in connection with providing legal services while acting within the scope of the person's duties or employment, is exclusive of any other civil action or proceeding by reason of the same subject matter against the person (or the estate of the person) whose act or omission gave rise to such action or proceeding.

(b) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) (or the estate of such person) for any such injury. Any person against whom such a civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person (or an attested true copy thereof) to such person's immediate superior or to whomever was designated by the head of the agency concerned to receive such papers. Such person shall promptly furnish copies of the pleading and process therein—

(1) to the United States attorney for the district embracing the place wherein the action or proceeding is brought;

(2) to the Attorney General; and

(3) to the head of the agency concerned.

(c) Upon a certification by the Attorney General that a person described in subsection (a) was acting in the scope of such person's duties or employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court—

(1) shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending; and

(2) shall be deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) is not avail-

able against the United States, the case shall be remanded to the State court.

(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect.

(e) For purposes of this section, the provisions of section 2680(h) of title 28 shall not apply to a cause of action arising out of a negligent or wrongful act or omission in the provision of legal assistance.

(f) The head of the agency concerned may hold harmless or provide liability insurance for any person described in subsection (a) for damages for injury or loss of property caused by such person's negligent or wrongful act or omission in the provision of authorized legal assistance while acting within the scope of such person's duties if such person is assigned to a foreign country or detailed for service with an entity other than a Federal department, agency, or instrumentality or if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 1346(b) of title 28, for such damage or injury.

(g) In this section, the term "head of the agency concerned" means the Secretary of Defense, the Secretary of a military department, or the Secretary of the department in which the Coast Guard is operating, as appropriate.

(Added P.L. 99–661, § 1356(a), Nov. 14, 1986, 100 Stat. 3996; amended P.L. 100–448, § 15(a), Sept. 28, 1988, 102 Stat. 1845.)

§ 1055. Waiver of security deposits for members renting private housing; authority to indemnify landlord

(a) The Secretary of Defense may carry out a program under which the Secretary of a military department agrees to indemnify a landlord who leases a rental unit to a member of the armed forces against a breach of the lease by the member or for damage to the rental unit caused by the member. In exchange for agreement for such indemnification by the Secretary, the landlord shall be required to waive any requirement for payment by the member of a security deposit that the landlord would otherwise require.

(b)(1) For purposes of carrying out a program authorized by subsection (a), the Secretary of a military department, to the extent funds are provided in advance in appropriation Act, may enter into an agreement with any landlord who agrees to waive the requirement for a security deposit in connection with the lease of a rental unit to a member of the armed forces under the jurisdiction of the Secretary. An agreement under this paragraph shall provide that—

(A) the term of the agreement shall remain in effect during the term of the member's lease and during any lease renewal periods with the lessor;

(B) the member shall not pay a security deposit;

(C) the Secretary (except as provided in subparagraphs (D) and (E) shall compensate the landlord for breach of the lease by the member and for damage to the rental unit caused by the member or by a guest or dependent of the member;

(D) the total liability of the Secretary for a breach of the lease or for damage described in subparagraph (C) may not ex-

ceed an amount equal to the amount that the Secretary determines would have been required by the landlord as a security deposit in the absence of an agreement authorized in this paragraph;

(E) the Secretary may not compensate the landlord for any claim for breach of the lease or for damage described in subparagraph (C) until the landlord exhausts any remedies available to the landlord (including submission to binding arbitration by a panel composed of military personnel and persons from the private sector) against the member for the breach or damage; and

(F) the Secretary shall be subrogated to the rights of the landlord in any case in which the Secretary compensates the landlord for breach of the lease or for damage described in subparagraph (C).

(2) Any authority of the Secretary of a military department under this section shall be exercised under regulations prescribed by the Secretary of Defense.

(c)(1) The Secretary of a military department who compensates a landlord under subsection (b) for a breach of a lease or for damage described in subsection (b)(1)(C) may issue a special order under section 1007 of title 37 to authorize the withholding from the pay of the member of an amount equal to the amount paid by the Secretary to the landlord as compensation for the breach or damage.

(2) Before the Secretary of a military department issues a special order under section 1007 of title 37 to authorize the withholding of any amount from the pay of a member for a breach or damage referred to in paragraph (1), the Secretary concerned shall provide the member with the same notice and opportunity for hearing and record inspection as provided an individual under section 5514(a)(2) of title 5. The Secretary concerned shall prescribe regulations, subject to the approval of the President, to carry out this paragraph. Such regulations shall be as uniform for the military departments as practicable.

(d) In this section, the term "landlord" means a person who leases a rental unit to a member of the armed forces.

(Added P.L. 100–456, § 621(a), Sept. 29, 1988, 102 Stat. 1982.)

§ 1056. Relocation assistance programs

(a) REQUIREMENT TO PROVIDE ASSISTANCE.—The Secretary of Defense shall carry out a program to provide relocation assistance to members of the armed forces and their families as provided in this section. In addition, the Secretary of Defense shall make every effort, consistent with readiness objectives, to stabilize and lengthen tours of duty to minimize the adverse effects of relocation.

(b) TYPES OF ASSISTANCE.—(1) The Secretary of each military department, under regulations prescribed by the Secretary of Defense, shall provide relocation assistance, through military relocation assistance programs described in subsection (c), to members of the armed forces who are ordered to make a change of permanent station which includes a move to a new location (and for dependents of such members who are authorized to move in connection with the change of permanent station).

(2) The relocation assistance provided shall include the following:

(A) Provision of destination area information and preparation (to be provided before the change of permanent station takes effect), with emphasis on information with regard to moving costs, housing costs and availability, child care, spouse employment opportunities, cultural adaptation, and community orientation.

(B) Provision of counseling about financial management, home buying and selling, renting, stress management aimed at intervention and prevention of abuse, property management, and shipment and storage of household goods (including motor vehicles and pets).

(C) Provision of settling-in services, with emphasis on available government living quarters, private housing, child care, spouse employment assistance information, cultural adaptation, and community orientation.

(D) Provision of home finding services, with emphasis on services for locating adequate, affordable temporary and permanent housing.

(c) MILITARY RELOCATION ASSISTANCE PROGRAMS.—(1) The Secretary shall provide for the establishment of military relocation assistance programs to provide the relocation assistance described in subsection (b). The Secretary shall establish such a program in each geographic area in which at least 500 members of the armed forces are assigned to or serving at a military installation. A member who is not stationed within a geographic area that that contains such a program shall be given access to such a program. The Secretary shall ensure that persons on the staff of each program are trained in the techniques and delivery of professional relocation assistance.

(2) The Secretary shall ensure that, not later than September 30, 1991, information available through each military relocation assistance program shall be managed through a computerized information system that can interact with all other military relocation assistance programs of the military departments, including programs located outside the continental United States.

(3) Duties of each military relocation assistance program shall include assisting personnel offices on the military installation in using the computerized information available through the program to help provide members of the armed forces who are deciding whether to reenlist information on locations of possible future duty assignments.

(d) DIRECTOR.—The Secretary of Defense shall establish the position of Director of Military Relocation Assistance Programs in the office of the Assistant Secretary of Defense (Force Management and Personnel). The Director shall oversee development and implementation of the military relocation assistance programs under this section.

(e) REGULATIONS.—This section shall be administered under regulations prescribed by the Secretary of Defense.

(f) INAPPLICABILITY TO COAST GUARD.—This section does not apply to the Coast Guard.

(Added P.L. 101–510, § 1481(c)(1), Nov. 5, 1990, 104 Stat. 1705; amended P.L. 104–106, § 1062(a), Feb. 10, 1996, 110 Stat. 443.)

§ 1057. Use of armed forces insignia on State license plates

(a) The Secretary concerned may approve an application by a State to use or imitate the seal or other insignia of the department (under the jurisdiction of such Secretary) or of armed forces (under the jurisdiction of such Secretary) on motor vehicle license plates issued by the State to an individual who is a member or former member of the armed forces.

(b) The Secretary concerned may prescribe any regulations necessary regarding the display of the seal or other insignia of the department (under the jurisdiction of such Secretary) or of armed forces (under the jurisdiction of such Secretary) on the license plates described in subsection (a).

(c) In this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa.

(Added P.L. 102–484, § 1080(a), Oct. 23, 1992, 106 Stat. 2514.)

§ 1058. Responsibilities of military law enforcement officials at scenes of domestic violence

(a) IMMEDIATE ACTIONS REQUIRED.—Under regulations prescribed pursuant to subsection (c), the Secretary concerned shall ensure, in any case of domestic violence in which a military law enforcement official at the scene determines that physical injury has been inflicted or a deadly weapon or dangerous instrument has been used, that military law enforcement officials—

(1) take immediate measures to reduce the potential for further violence at the scene; and

(2) within 24 hours of the incident, provide a report of the domestic violence to the appropriate commander and to a local military family advocacy representative exercising responsibility over the area in which the incident took place.

(b) FAMILY ADVOCACY COMMITTEE.—Under regulations prescribed pursuant to subsection (c), the Secretary concerned shall ensure that, whenever a report is provided to a commander under subsection (a)(2), a multidisciplinary family advocacy committee meets, with all due practicable speed, to review the situation and to make recommendations to the commander for appropriate action.

(c) REGULATIONS.—The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe by regulation the definition of "domestic violence" for purposes of this section and such other regulations as may be necessary for purposes of this section.

(d) MILITARY LAW ENFORCEMENT OFFICIAL.—In this section, the term "military law enforcement official" means a person

authorized under regulations governing the armed forces to apprehend persons subject to the Uniform Code of Military Justice (chapter 47 of this title) or to trial thereunder.

(Added P.L. 103–160, § 551(a)(1), Nov. 30, 1993, 107 Stat. 1661; amended P.L. 103–337, § 1070(a)(4), Oct. 5, 1994, 108 Stat. 2855.)

§ 1059. Dependents of members separated for dependent abuse: transitional compensation; commissary and exchange benefits [2]

(a) AUTHORITY TO PAY COMPENSATION.—The Secretary of Defense, with respect to the armed forces (other than the Coast Guard when it is not operating as a service in the Navy), and the Secretary of Transportation, with respect to the Coast Guard when it is not operating as a service in the Navy, may each establish a program to pay monthly transitional compensation in accordance with this section to dependents or former dependents of a member of the armed forces described in subsection (b). Upon establishment of such a program, the program shall apply in the case of each such member described in subsection (b) who is under the jurisdiction of the Secretary establishing the program.

(b) PUNITIVE AND OTHER ADVERSE ACTIONS COVERED.—This section applies in the case of a member of the armed forces on active duty for a period of more than 30 days—

(1) who is convicted of a dependent-abuse offense (as defined in subsection (c)) and whose conviction results in the member—

(A) being separated from active duty pursuant to a sentence of a court-martial; or

(B) forfeiting all pay and allowances pursuant to a sentence of a court-martial; or

(2) who is administratively separated from active duty in accordance with applicable regulations if the basis for the separation includes a dependent-abuse offense.

(c) DEPENDENT-ABUSE OFFENSES.—For purposes of this section, a dependent-abuse offense is conduct by an individual while a member of the armed forces on active duty for a period of more than 30 days—

(1) that involves abuse of the spouse or a dependent child of the member; and

(2) that is a criminal offense specified in regulations prescribed by the Secretary of Defense under subsection (k).

(d) RECIPIENTS OF PAYMENTS.—In the case of any individual described in subsection (b), the Secretary shall pay such compensation to dependents or former dependents of the individual as follows:

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[2] Section 554(b) of the National Defense Authorization Act for Fiscal Year 1994 (10 U.S.C. 1059 note), as amended, provides:

(b) EFFECTIVE DATE.—(1) [Section 1059] shall apply with respect to a member of the Armed Forces who, after November 29, 1993—

(A) is separated from active duty as described in subsection (b) of such section; and

(B) forfeits all pay and allowances as described in such subsection.

(2) Payments of transitional compensation under that section in the case of any person eligible to receive payments under that section shall be made for each month after November 1993 for which that person may be paid transitional compensation in accordance with that section.

(1) If the individual was married at the time of the commission of the dependent-abuse offense resulting in the separation, such compensation shall be paid to the spouse or former spouse to whom the individual was married at that time, including an amount (determined under subsection (f)(2)) for each, if any, dependent child of the individual described in subsection (b) who resides in the same household as that spouse or former spouse.

(2) If there is a spouse or former spouse who is or, but for subsection (g), would be eligible for compensation under this section and if there is a dependent child of the individual described in subsection (b) who does not reside in the same household as that spouse or former spouse, compensation under this section shall be paid to each such dependent child of the individual described in subsection (b) who does not reside in that household.

(3) If there is no spouse or former spouse who is (or but for subsection (g) would be) eligible under paragraph (1), such compensation shall be paid to the dependent children of the individual described in subsection (b).

(4) For purposes of this subsection, an individual's status as a "dependent child" shall be determined as of the date on which the individual described in subsection (b) is convicted of the dependent-abuse offense or, in a case described in subsection (b)(2), as of the date on which the individual described in subsection (b) is separated from active duty.

(e) COMMENCEMENT AND DURATION OF PAYMENT.—(1) Payment of transitional compensation under this section—

(A) in the case of a member convicted by a court-martial for a dependent-abuse offense, shall commence as of the date of the approval of the court-martial sentence by the person acting under section 860(c) of this title (article 60(c) of the Uniform Code of Military Justice) if the sentence, as approved, includes a dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances; and

(B) in the case of a member being considered under applicable regulations for administrative separation from active duty in accordance with such regulations (if the basis for the separation includes a dependent-abuse offense), shall commence as of the date on which the separation action is initiated by a commander of the member pursuant to such regulations, as determined by the Secretary concerned.

(2) Transitional compensation with respect to a member shall be paid for a period of 36 months, except that, if as of the date on which payment of transitional compensation commences the unserved portion of the member's period of obligated active duty service is less than 36 months, the period for which transitional compensation is paid shall be equal to the greater of—

(A) the unserved portion of the member's period of obligated active duty service; or

(B) 12 months.

(3)(A) If a member is sentenced by a court-martial to receive punishment that includes a dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances as a re-

sult of a conviction by a court-martial for a dependent-abuse offense and each such punishment applicable to the member under the sentence is remitted, set aside, or mitigated to a lesser punishment that does not include any such punishment, any payment of transitional compensation that has commenced under this section on the basis of such sentence in that case shall cease.

(B) If administrative separation of a member from active duty is proposed on a basis that includes a dependent-abuse offense and the proposed administrative separation is disapproved by competent authority under applicable regulations, payment of transitional compensation in such case shall cease.

(C) Cessation of payments under subparagraph (A) or (B) shall be effective as of the first day of the first month following the month in which the Secretary concerned notifies the recipient of such transitional compensation in writing that payment of the transitional compensation will cease. The recipient may not be required to repay amounts of transitional compensation received before that effective date (except to the extent necessary to recoup any amount that was erroneous when paid).

(f) AMOUNT OF PAYMENT.—(1) Payment to a spouse or former spouse under this section for any month shall be at the rate in effect for that month for the payment of dependency and indemnity compensation under section 1311(a)(1) of title 38.

(2) If a spouse or former spouse to whom compensation is paid under this section has custody of a dependent child of the member who resides in the same household as that spouse or former spouse, the amount of such compensation paid for any month shall be increased for each such dependent child by the amount in effect for that month under section 1311(b) of title 38.

(3) If compensation is paid under this section to a child or children pursuant to subsection (d)(2) or (d)(3), such compensation shall be paid in equal shares, with the amount of such compensation for any month determined in accordance with the rates in effect for that month under section 1313 of title 38.

(g) SPOUSE AND FORMER SPOUSE FORFEITURE PROVISIONS.—(1) If a former spouse receiving compensation under this section remarries, the Secretary shall terminate payment of such compensation, effective as of the date of such marriage. The Secretary may not renew payment of compensation under this section to such former spouse in the event of the termination of such subsequent marriage.

(2) If after a punitive or other adverse action is executed in the case of a former member as described in subsection (b) the former member resides in the same household as the spouse or former spouse, or dependent child, to whom compensation is otherwise payable under this section, the Secretary shall terminate payment of such compensation, effective as of the time the former member begins residing in such household. Compensation paid for a period after the former member's separation, but before the former member resides in the household, shall not be recouped. If the former member subsequently ceases to reside in such household before the end of the period of eligibility for such payments, the Secretary may not resume such payments.

(3) In a case in which the victim of the dependent-abuse offense resulting in a punitive or other adverse action described in subsection (b) was a dependent child, the Secretary concerned may not pay compensation under this section to a spouse or former spouse who would otherwise be eligible to receive such compensation if the Secretary determines (under regulations prescribed under subsection (k)) that the spouse or former spouse was an active participant in the conduct constituting the dependent-abuse offense.

(h) EFFECT OF CONTINUATION OF MILITARY PAY.—In the case of payment of transitional compensation by reason of a total forfeiture of pay and allowances pursuant to a sentence of a court-martial, payment of transitional compensation shall not be made for any period for which an order—

(1) suspends, in whole or in part, that part of a sentence that includes forfeiture of the member's pay and allowance; or

(2) otherwise results in continuation, in whole or in part, of the member's pay and allowances.

(i) COORDINATION OF BENEFITS.—The Secretary concerned may not make payments to a spouse or former spouse under both this section and section 1408(h)(1) of this title. In the case of a spouse or former spouse for whom a court order provides for payments by the Secretary pursuant to section 1408(h)(1) of this title and to whom the Secretary offers payments under this section, the spouse or former spouse shall elect which to receive.

(j) COMMISSARY AND EXCHANGE BENEFITS.—(1) A dependent or former dependent entitled to payment of monthly transitional compensation under this section shall, while receiving payments in accordance with this section, be entitled to use commissary and exchange stores to the same extent and in the same manner as a dependent of a member of the armed forces on active duty for a period of more than 30 days.

(2) If a dependent or former dependent eligible or entitled to use commissary and exchange stores under paragraph (1) is eligible or entitled to use commissary and exchange stores under another provision of law, the eligibility or entitlement of that dependent or former dependent to use commissary and exchange stores shall be determined under such other provision of law rather than under paragraph (1).

(k) REGULATIONS.—(1) The Secretary of Defense shall prescribe regulations to carry out this section with respect to the armed forces (other than the Coast Guard when it is not operating as a service in the Navy). The Secretary of Transportation shall prescribe regulations to carry out this section with respect to the Coast Guard when it is not operating as a service in the Navy.

(2) Regulations prescribed under paragraph (1) shall include the criminal offenses, or categories of offenses, under the Uniform Code of Military Justice (chapter 47 of this title), Federal criminal law, the criminal laws of the States and other jurisdictions of the United States, and the laws of other nations that are to be considered to be dependent-abuse offenses for the purposes of this section.

(l) DEPENDENT CHILD DEFINED.—In this section, the term "dependent child", with respect to a member or former member of the

armed forces referred to in subsection (b), means an unmarried child, including an adopted child or a stepchild, who was residing with the member at the time of the dependent-abuse offense resulting in the separation of the former member and—

(1) who is under 18 years of age;

(2) who is 18 years of age or older and is incapable of self-support because of a mental or physical incapacity that existed before the age of 18 and who is (or, at the time a punitive or other adverse action was executed in the case of the former member as described in subsection (b), was) dependent on the former member for over one-half of the child's support; or

(3) who is 18 years of age or older but less than 23 years of age, is enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense and who is (or, at the time a punitive or other adverse action was executed in the case of the former member as described in subsection (b), was) dependent on the former member for over one-half of the child's support.

(Added as § 1058 P.L. 103–160, § 554(a)(1), Nov. 30, 1993, 107 Stat. 1663; amended and redesignated § 1059 P.L. 103–337, §§ 535, 1070(a)(5)(A), Oct. 5, 1994, 108 Stat. 2762, 2855; P.L. 104–106, §§ 636(a),(b), 1503(a)(8), Feb. 10, 1996, 110 Stat. 367, 511; P.L. 105–261, § 570(a), (b), Oct. 17, 1998, 112 Stat. 2032.)

§ 1060. Military service of retired members with newly democratic nations: consent of Congress

(a) CONSENT OF CONGRESS.—Subject to subsection (b), Congress consents to a retired member of the uniformed services—

(1) accepting employment by, or holding an office or position in, the military forces of a newly democratic nation; and

(2) accepting compensation associated with such employment, office, or position.

(b) APPROVAL REQUIRED.—The consent provided in subsection (a) for a retired member of the uniformed services to accept employment or hold an office or position shall apply to a retired member only if the Secretary concerned and the Secretary of State jointly approve the employment or the holding of such office or position.

(c) DETERMINATION OF NEWLY DEMOCRATIC NATIONS.—The Secretary concerned and the Secretary of State shall jointly determine whether a nation is a newly democratic nation for the purposes of this section.

(d) REPORTS TO CONGRESSIONAL COMMITTEES.—The Secretary concerned and the Secretary of State shall 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 of each approval under subsection (b) and each determination under subsection (c).

(e) CONTINUED ENTITLEMENT TO RETIRED PAY AND BENEFITS.—The eligibility of a retired member to receive retired or retainer pay and other benefits arising from the retired member's status as a retired member of the uniformed services, and the eligibility of dependents of such retired member to receive benefits on the basis of such retired member's status as a retired member of the uni-

formed services, may not be terminated by reason of employment or holding of an office or position consented to in subsection (a).

(f) RETIRED MEMBER DEFINED.—In this section, the term "retired member" means a member or former member of the uniformed services who is entitled to receive retired or retainer pay.

(g) CIVIL EMPLOYMENT BY FOREIGN GOVERNMENTS.—For a provision of law providing the consent of Congress to civil employment by foreign governments, see section 908 of title 37.

(Added as § 1058 P.L. 103–160, § 1433(b)(1), Nov. 30, 1993, 107 Stat. 1834; redesignated § 1060 P.L. 103–337, § 1070(a)(6)(A), Oct. 5, 1994, 108 Stat. 2855; P.L. 104–106, § 1502(a)(13), Feb. 10, 1996, 110 Stat. 503; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 1060a. Special supplemental food program

(a) PROGRAM REQUIRED.—The Secretary of Defense shall carry out a program to provide supplemental foods and nutrition education to members of the armed forces on duty at stations outside the United States (and its territories and possessions) and to eligible civilians serving with, employed by, or accompanying the armed forces outside the United States (and its territories and possessions).

(b) FUNDING MECHANISM.—The Secretary of Defense shall use funds available for the Department of Defense to carry out the program under subsection (a).

(c) PROGRAM ADMINISTRATION.—(1)(A) The Secretary of Defense shall administer the program referred to in subsection (a) and, except as provided in subparagraph (B), shall determine eligibility for program benefits under the criterion published by the Secretary of Agriculture under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786). In determining eligibility for benefits, a person already certified for participation in the special supplemental nutrition program for women, infants, and children under such section 17 shall be considered eligible for the duration of the certification period under that special supplemental nutrition program.

(B) In determining eligibility for families of individuals participating in the program under this section, the Secretary of Defense shall, to the extent practicable, use the criterion described in subparagraph (A), including nutritional risk standards. In the application of such criterion, the Secretary shall exclude from income any basic allowance for housing as permitted under section 17(d)(2)(B) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(2)(B)).

(2) The program benefits provided under the program shall be similar to benefits provided by State and local agencies in the United States, particularly with respect to nutrition education.

(3) The Secretary of Agriculture shall provide technical assistance to the Secretary of Defense, if so requested by the Secretary of Defense, for the purpose of carrying out the program under subsection (a).

(d) DEPARTURE FROM STANDARDS.—The Secretary of Defense may authorize departures from standards prescribed by the Secretary of Agriculture regarding the supplemental foods to be made available in the program when local conditions preclude strict compliance or when such compliance is highly impracticable.

(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations to administer the program authorized by this section.

(f) DEFINITIONS.—In this section:

(1) The term "eligible civilian" means—

(A) a dependent of a member of the armed forces residing with the member outside the United States;

(B) an employee of a military department who is a national of the United States and is residing outside the United States in connection with such individual's employment or a dependent of such individual residing with the employee outside the United States; or

(C) an employee of a Department of Defense contractor who is a national of the United States and is residing outside the United States in connection with such individual's employment or a dependent of such individual residing with the employee outside the United States.

(2) The term "national of the United States" means—

(A) a citizen of the United States; or

(B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States, as determined in accordance with the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(3) The term "dependent" has the meaning given such term in subparagraphs (A), (D), (E), and (I) of section 1072(2) of this title.

(4) The terms "nutrition education" and "supplemental foods" have the meanings given the terms in section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)).

(Added P.L. 103–337, § 653(a), Oct. 5, 1994, 108 Stat. 2794; amended P.L. 104–106, § 1503(a)(9), Feb. 10, 1996, 110 Stat. 511; P.L. 105–85, § 655(b)(1), Nov. 18, 1997, 111 Stat. 1805; P.L. 106–65, § 674(a)–(d), Oct. 5, 1999, 113 Stat. 675; P.L. 106–398, § 1[662], Oct. 30, 2000, 114 Stat. 1654, 1654A–167.)

CHAPTER 54—COMMISSARY AND EXCHANGE BENEFITS

Sec.
1061. Survivors of certain Reserve and Guard members.
1062. Certain former spouses.
1063. Use of commissary stores: members of Ready Reserve with at least 50 creditable points.
1063a. Use of commissary stores and MWR retail facilities: members of National Guard serving in federally declared disaster.
1064. Use of commissary stores: persons qualified for retired pay under chapter 1223 but under age 60.
1065. Morale, welfare, and recreation retail facilities: use by members of reserve components and dependents.

§ 1061. Survivors of certain Reserve and Guard members

(a) BENEFITS.—The Secretary of Defense shall prescribe regulations to allow dependents of members of the uniformed services described in subsection (b) to use commissary and exchange stores on the same basis as dependents of members of the uniformed services who die while on active duty for a period of more than 30 days.

(b) COVERED DEPENDENTS.—A dependent referred to in subsection (a) is a dependent of a member of a uniformed service who died—

(1) while on active duty, active duty for training, or inactive-duty training (regardless of the period of such duty); or

(2) while traveling to or from the place at which the member was to perform, or has performed, active duty, active duty for training, or inactive-duty training (regardless of the period of such duty).

(Added P.L. 100–370, § 1(c)(1), July 19, 1988, 102 Stat. 840.)

§ 1062. Certain former spouses

The Secretary of Defense shall prescribe such regulations as may be necessary to provide that an unremarried former spouse described in subparagraph (F)(i) of section 1072(2) of this title is entitled to commissary and exchange privileges to the same extent and on the same basis as the surviving spouse of a retired member of the uniformed services.

(Added P.L. 100–370, § 1(c)(1), July 19, 1988, 102 Stat. 840.)

§ 1063. Use of commissary stores: members of Ready Reserve with at least 50 creditable points

(a) ELIGIBILITY OF MEMBERS OF READY RESERVE.—A member of the Ready Reserve who satisfactorily completes 50 or more points creditable under section 12732(a)(2) of this title in a calendar year shall be eligible to use commissary stores of the Department of Defense. The Secretary concerned shall authorize the member to have 24 days of eligibility for any calendar year that the member qualifies for eligibility under this subsection.

(b) EFFECT OF COMPENSATION OR TYPE OF DUTY.—Subsection (a) shall apply without regard to whether, during the calendar year, the member receives compensation for the duty or training performed by the member or performs active duty for training.

(c) REGULATIONS.—The Secretary concerned shall prescribe regulations, subject to the approval of the Secretary of Defense, to carry out this section.

(Added as § 1052 by P.L. 99–661, § 656(a), Nov. 14, 1986, 100 Stat. 3891; transferred and redesignated § 1063 P.L. 100–370, § 1(c)(2), July 19, 1988, 102 Stat. 841; amended P.L. 101–510, § 321(a), Nov. 5, 1990, 104 Stat. 1527; P.L. 102–484, § 365, Oct. 23, 1992, 106 Stat. 2382; P.L. 104–106, § 1501(c)(9), Feb. 10, 1996, 110 Stat. 499; P.L. 105–261, § 362(a), (d)(1), Oct. 17, 1998, 112 Stat. 1984, 1985.)

§ 1063a. Use of commissary stores and MWR retail facilities: members of National Guard serving in federally declared disaster

(a) ELIGIBILITY OF MEMBERS.—A member of the National Guard who, although not in Federal service, is called or ordered to duty in response to a federally declared disaster shall be permitted to use commissary stores and MWR retail facilities during the period of such duty on the same basis as members of the armed forces on active duty.

(b) ELIGIBILITY OF DEPENDENTS.—A dependent of a member of the National Guard who is permitted under subsection (a) to use commissary stores and MWR retail facilities shall be permitted to use such stores and facilities, during the same period as the member, on the same basis as dependents of members of the armed forces on active duty.

(c) DEFINITIONS.—In this section:

(1) FEDERALLY DECLARED DISASTER.—The term "federally declared disaster" means a disaster or other situation for which a Presidential declaration of major disaster is issued under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

(2) MWR RETAIL FACILITIES.—The term "MWR retail facilities" has the meaning given that term in section 1065(e) of this title.

(Added P.L. 105–261, § 362(c), Oct. 17, 1998, 112 Stat. 1985.)

§ 1064. Use of commissary stores: persons qualified for retired pay under chapter 1223 but under age 60

Under regulations prescribed by the Secretary of Defense, a person who would be eligible for retired pay under chapter 1223 of this title but for the fact that the person is under 60 years of age shall be authorized to use commissary stores of the Department of Defense for 24 days each calendar year.

(Added P.L. 101–510, § 321(b), Nov. 5, 1990, 104 Stat. 1528; amended P.L. 104–106, § 1501(c)(8), Feb. 10, 1996, 110 Stat. 499; P.L. 105–261, § 362(b), (d)(2), Oct. 17, 1998, 112 Stat. 1984, 1985.)

§ 1065. Morale, welfare, and recreation retail facilities: use by members of reserve components and dependents

(a) MEMBERS OF THE SELECTED RESERVE.—A member of the Selected Reserve in good standing (as determined by the Secretary

concerned) shall be permitted to use MWR retail facilities on the same basis as members on active duty.

(b) MEMBERS OF READY RESERVE NOT IN SELECTED RESERVE.—Subject to such regulations as the Secretary of Defense may prescribe, a member of the Ready Reserve (other than members of the Selected Reserve) may be permitted to use MWR retail facilities on the same basis as members serving on active duty.

(c) RESERVE RETIREES UNDER AGE 60.—A member or former member of a reserve component under 60 years of age who, but for age, would be eligible for retired pay under chapter 1223 of this title shall be permitted to use MWR retail facilities on the same basis as members of the armed forces entitled to retired pay under any other provision of law.

(d) DEPENDENTS.—(1) Dependents of a member who is permitted under subsection (a) or (b) to use MWR retail facilities shall be permitted to use such facilities on the same basis as dependents of members on active duty.

(2) Dependents of a member who is permitted under subsection (c) to use MWR retail facilities shall be permitted to use such facilities on the same basis as dependents of members of the armed forces entitled to retired pay under any other provision of law.

(e) MWR RETAIL FACILITY DEFINED.—In this section, the term "MWR retail facilities" means exchange stores and other revenue-generating facilities operated by nonappropriated fund activities of the Department of Defense for the morale, welfare, and recreation of members of the armed forces.

(Added P.L. 101–510, § 321(c), Nov. 5, 1990, 104 Stat. 1528; amended in its entirety P.L. 104–106, § 342(a), Feb. 10, 1996, 110 Stat. 265.)

CHAPTER 55—MEDICAL AND DENTAL CARE [1]

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[1] In addition to the provisions set forth in this chapter, numerous provisions of law applicable to medical and dental care for members of the uniformed services are enacted in annual defense authorization and defense appropriations Acts. Provisions from those Acts that are of general and continuing applicability, including provisions relating to Uniformed Services Treatment Facilities, the CHAMPUS Reform Initiative, and the TRICARE program, are set forth in the committee print publication of the Committee on Armed Services of the House of Representatives captioned "Compilation of Defense-Related Federal Laws (other than title 10, United States Code)".

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§ 1071. Purpose of this chapter

The purpose of this chapter is to create and maintain high morale in the uniformed services by providing an improved and uniform program of medical and dental care for members and certain former members of those services, and for their dependents.

(Added P.L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1445; amended P.L. 89–614, § 2(1), Sept. 30, 1966, 80 Stat. 862; P.L. 96–513, § 511(34)(A), (B), Dec. 12, 1980, 94 Stat. 2922.)

§ 1072. Definitions

In this chapter:

(1) The term "uniformed services" means the armed forces and the Commissioned Corps of the National Oceanic and Atmospheric Administration and of the Public Health Service.

(2) The term "dependent", with respect to a member or former member of a uniformed service, means—

(A) the spouse;

(B) the unremarried widow;

(C) the unremarried widower;

(D) a child who—

(i) has not attained the age of 21;

(ii) has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary and is, or was at the time of the member's or former mem-

ber's death, in fact dependent on the member or former member for over one-half of the child's support; or

(iii) is incapable of self-support because of a mental or physical incapacity that occurs while a dependent of a member or former member under clause (i) or (ii) and is, or was at the time of the member's or former member's death, in fact dependent on the member or former member for over one-half of the child's support;

(E) a parent or parent-in-law who is, or was at the time of the member's or former member's death, in fact dependent on him for over one-half of his support and residing in his household;

(F) the unremarried former spouse of a member or former member who (i) on the date of the final decree of divorce, dissolution, or annulment, had been married to the member or former member for a period of at least 20 years during which period the member or former member performed at least 20 years of service which is creditable in determining that member's or former member's eligibility for retired or retainer pay, or equivalent pay, and (ii) does not have medical coverage under an employer-sponsored health plan;

(G) a person who (i) is the unremarried former spouse of a member or former member who performed at least 20 years of service which is creditable in determining the member or former member's eligibility for retired or retainer pay, or equivalent pay, and on the date of the final decree of divorce, dissolution, or annulment before April 1, 1985, had been married to the member or former member for a period of at least 20 years, at least 15 of which, but less than 20 of which, were during the period the member or former member performed service creditable in determining the member or former member's eligibility for retired or retainer pay, and (ii) does not have medical coverage under an employer-sponsored health plan;

(H) a person who would qualify as a dependent under clause (G) but for the fact that the date of the final decree of divorce, dissolution, or annulment of the person is on or after April 1, 1985, except that the term does not include the person after the end of the one-year period beginning on the date of that final decree; and

(I) an unmarried person who—

(i) is placed in the legal custody of the member or former member as a result of an order of a court of competent jurisdiction in the United States (or a Territory or possession of the United States) for a period of at least 12 consecutive months;

(ii) either—

(I) has not attained the age of 21;

(II) has not attained the age of 23 and is enrolled in a full time course of study at an institu-

tion of higher learning approved by the administering Secretary; or

(III) is incapable of self support because of a mental or physical incapacity that occurred while the person was considered a dependent of the member or former member under this subparagraph pursuant to subclause (I) or (II);

(iii) is dependent on the member or former member for over one-half of the person's support;

(iv) resides with the member or former member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation or under such other circumstances as the administering Secretary may by regulation prescribe; and

(v) is not a dependent of a member or a former member under any other subparagraph.

(3) The term "administering Secretaries" means the Secretaries of executive departments specified in section 1073 of this title as having responsibility for administering this chapter.

(4) The term "Civilian Health and Medical Program of the Uniformed Services" means the program authorized under sections 1079 and 1086 of this title and includes contracts entered into under section 1091 or 1097 of this title and demonstration projects under section 1092 of this title.

(5) The term "covered beneficiary" means a beneficiary under this chapter other than a beneficiary under section 1074(a) of this title.

(6) The term "child", with respect to a member or former member of a uniformed service, means the following:

(A) An unmarried legitimate child.

(B) An unmarried adopted child.

(C) An unmarried stepchild.

(D) An unmarried person—

(i) who is placed in the home of the member or former member by a placement agency (recognized by the Secretary of Defense) in anticipation of the legal adoption of the person by the member or former member; and

(ii) who otherwise meets the requirements specified in paragraph (2)(D).

(7) The term "TRICARE program" means the managed health care program that is established by the Department of Defense under the authority of this chapter, principally section 1097 of this title, and includes the competitive selection of contractors to financially underwrite the delivery of health care services under the Civilian Health and Medical Program of the Uniformed Services.

(Added P.L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1446; amended P.L. 89–614, § 2(1), Sept. 30, 1966, 80 Stat. 862; P.L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117; P.L. 96–513, § 115(b), § 511(34)(A), (35), (36), Dec. 12, 1980, 94 Stat. 2877, 2922, 2923; P.L. 97–252, § 1004(a), Sept. 8, 1982, 96 Stat. 737; P.L. 98–525, § 645(a), Oct. 19, 1984, 98 Stat. 2548; P.L. 98–557, § 19(1), Oct. 30, 1984, 98 Stat. 2869; P.L. 99–661, § 701(b), Nov. 14, 1986, 100 Stat. 3898; P.L. 101–189, § 731(a), Nov. 29, 1989, 103 Stat. 1481; P.L. 102–484, § 706, Oct. 23, 1992, 106 Stat. 2433; P.L. 103–160, § 702(a), Nov. 30, 1993, 107 Stat. 1686; P.L. 103–337, § 701(a), Oct. 5, 1994, 108 Stat. 2992; P.L. 105–85, § 711, Nov. 18, 1997, 111 Stat. 1808.)

§ 1073. Administration of this chapter

(a) RESPONSIBLE OFFICIALS.—Except as otherwise provided in this chapter, the Secretary of Defense shall administer this chapter for the armed forces under his jurisdiction, the Secretary of Transportation shall administer this chapter for the Coast Guard when the Coast Guard is not operating as a service in the Navy, and the Secretary of Health and Human Services shall administer this chapter for the National Oceanic and Atmospheric Administration and the Public Health Service. This chapter shall be administered consistent with the Assisted Suicide Funding Restriction Act of 1997 (42 U.S.C. 14401 et seq.).

(b) STABILITY IN PROGRAM OF BENEFITS.—The Secretary of Defense shall, to the maximum extent practicable, provide a stable program of benefits under this chapter throughout each fiscal year. To achieve the stability in the case of managed care support contracts entered into under this chapter, the contracts shall be administered so as to implement all changes in benefits and administration on a quarterly basis. However, the Secretary of Defense may implement any such change prior to the next fiscal quarter if the Secretary determines that the change would significantly improve the provision of care to eligible beneficiaries under this chapter.

(Added P.L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1446; amended P.L. 89–614, § 2(1), Sept. 30, 1966, 80 Stat. 862; P.L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117; P.L. 96–513, § 511(34)(A), (C), (35), (36), Dec. 12, 1980, 94 Stat. 2922, 2923; P.L. 98–557, § 19(2), Oct. 30, 1984, 98 Stat. 2869; P.L. 105–12, § 9(h), Apr. 30, 1997, 111 Stat. 27; P.L. 106–65, §§ 725, 1066(a)(7), Oct. 5, 1999, 113 Stat. 698, 770.)

§ 1073a. Contracts for health care: best value contracting

(a) AUTHORITY.—Under regulations prescribed by the administering Secretaries, health care contracts shall be awarded in the administration of this chapter to the offeror or offerors that will provide the best value to the United States to the maximum extent consistent with furnishing high-quality health care in a manner that protects the fiscal and other interests of the United States.

(b) FACTORS CONSIDERED.—In the determination of best value under subsection (a)—

(1) consideration shall be given to the factors specified in the regulations; and

(2) greater weight shall be accorded to technical and performance-related factors than to cost and price-related factors.

(c) APPLICABILITY.—The authority under the regulations prescribed under subsection (a) shall apply to any contract in excess of $5,000,000.

(Added P.L. 106–65, § 722(a), Oct. 5, 1999, 113 Stat. 695.)

§ 1074. Medical and dental care for members and certain former members

(a) Under joint regulations to be prescribed by administering Secretaries, a member of a uniformed service who is on active duty is entitled to medical and dental care in any facility of any uniformed service.

(b) Under joint regulations to be prescribed by the administering Secretaries, a member or former member of a uniformed

service who is entitled to retired or retainer pay, or equivalent pay may, upon request, be given medical and dental care in any facility of any uniformed service, subject to the availability of space and facilities and the capabilities of the medical and dental staff. The administering Secretaries may, with the agreement of the Secretary of Veterans Affairs, provide care to persons covered by this subsection in facilities operated by the Secretary of Veterans Affairs and determined by him to be available for this purpose on a reimbursable basis at rates approved by the President.

(c)[2](1) Funds appropriated to a military department may be used to provide medical and dental care to persons entitled to such care by law or regulations, including the provision of such care (other than elective private treatment) in private facilities for members of the armed forces. If a private facility or health care provider providing care under this subsection is a health care provider under the Civilian Health and Medical Program of the Uniformed Services, the Secretary of Defense, after consultation with the other administering Secretaries, may by regulation require the private facility or health care provider to provide such care in accordance with the same payment rules (subject to any modifications considered appropriate by the Secretary) as apply under that program.

(2)(A) Subject to such exceptions as the Secretary of Defense considers necessary, coverage for medical care for members of the armed forces under this subsection, and standards with respect to timely access to such care, shall be comparable to coverage for medical care and standards for timely access to such care under the managed care option of the TRICARE program known as TRICARE Prime.

(B) The Secretary of Defense shall enter into arrangements with contractors under the TRICARE program or with other appropriate contractors for the timely and efficient processing of claims under this subsection.

(3)(A) The Secretary of Defense may not require a member of the armed forces described in subparagraph (B) to receive routine primary medical care at a military medical treatment facility.

(B) A member referred to in subparagraph (A) is a member of the armed forces on active duty who is entitled to medical care under this subsection and who—

(i) receives a duty assignment described in subparagraph (C); and

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[2] On October 1, 2001, the amendments made by section 722(a)(1) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654, 1654A–185) take effect. That section provides:

(a) COVERAGE OF OTHER UNIFORMED SERVICES.—(1) Section 1074(c) of title 10, United States Code, is amended—

(A) by striking "armed forces" each place it appears, except in paragraph (3)(A), and inserting "uniformed services";

(B) in paragraph (1), by inserting after "military department" in the first sentence the following: ", the Department of Transportation (with respect to the Coast Guard when it is not operating as a service in the Navy), or the Department of Health and Human Services (with respect to the National Oceanic and Atmospheric Administration and the Public Health Service)";

(C) in paragraph (2), by adding at the end the following:

"(C) The Secretary of Defense shall consult with the other administering Secretaries in the administration of this paragraph."; and

(D) in paragraph (3)(A), by striking "The Secretary of Defense may not require a member of the armed forces described in subparagraph (B)" and inserting "A member of the uniformed services described in subparagraph (B) may not be required".

(ii) pursuant to the assignment of such duty, resides at a location that is more than 50 miles, or approximately one hour of driving time, from the nearest military medical treatment facility adequate to provide the needed care.

(C) A duty assignment referred to in subparagraph (B) means any of the following:

(i) Permanent duty as a recruiter.

(ii) Permanent duty at an educational institution to instruct, administer a program of instruction, or provide administrative services in support of a program of instruction for the Reserve Officers' Training Corps.

(iii) Permanent duty as a full-time adviser to a unit of a reserve component.

(iv) Any other permanent duty designated by the Secretary concerned for purposes of this paragraph.

(Added P.L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1446; amended P.L. 89–614, § 2(2), Sept. 30, 1966, 80 Stat. 862; P.L. 96–513, § 511(36), (37), Dec. 12, 1980, 94 Stat. 2923; P.L. 98–525, § 1401(e), Oct. 19, 1984, 98 Stat. 2616; P.L. 98–557, § 19(3), Oct. 30, 1984, 98 Stat. 2869; P.L. 101–189, §§ 729, 1621(a)(2), Nov. 29, 1989, 103 Stat. 1481, 1603; P.L. 101–510, § 1484(j)(1), Nov. 5, 1990, 104 Stat. 1718; P.L. 104–106, § 723, Feb. 10, 1996, 110 Stat. 377; P.L. 104–201, § 725(d), Sept. 23, 1996, 110 Stat. 2596; P.L. 105–85, § 731(a), Nov. 18, 1997, 111 Stat. 1810; P.L. 106–398, § 1[722(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–185.)

§ 1074a. Medical and dental care: members on duty other than active duty for a period of more than 30 days

(a) Under joint regulations prescribed by the administering Secretaries, the following persons are entitled to the benefits described in subsection (b):

(1) Each member of a uniformed service who incurs or aggravates an injury, illness, or disease in the line of duty while performing—

(A) active duty for a period of 30 days or less;

(B) inactive-duty training; or

(C) service on funeral honors duty under section 12503 of this title or section 115 of title 32.

(2) Each member of a uniformed service who incurs or aggravates an injury, illness, or disease while traveling directly to or from the place at which that member is to perform or has performed—

(A) active duty for a period of 30 days or less;

(B) inactive-duty training; or

(C) service on funeral honors duty under section 12503 of this title or section 115 of title 32.

(3) Each member of the armed forces who incurs or aggravates an injury, illness, or disease in the line of duty while remaining overnight immediately before the commencement of inactive-duty training, or while remaining overnight, between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training, if the site is outside reasonable commuting distance from the member's residence.

(4) Each member of the armed forces who incurs or aggravates an injury, illness, or disease in the line of duty while remaining overnight immediately before serving on funeral honors duty under section 12503 of this title or section 115 of title 32 at or in the vicinity of the place at which the member was

to so serve, if the place is outside reasonable commuting distance from the member's residence.

(b) A person described in subsection (a) is entitled to—

(1) the medical and dental care appropriate for the treatment of the injury, illness, or disease of that person until the resulting disability cannot be materially improved by further hospitalization or treatment; and

(2) subsistence during hospitalization.

(c) A member is not entitled to benefits under subsection (b) if the injury, illness, or disease, or aggravation of an injury, illness, or disease described in subsection (a)(2), is the result of the gross negligence or misconduct of the member.

(d)(1) The Secretary of the Army shall provide to members of the Selected Reserve of the Army who are assigned to units scheduled for deployment within 75 days after mobilization the following medical and dental services:

(A) An annual medical screening.

(B) For members who are over 40 years of age, a full physical examination not less often than once every two years.

(C) An annual dental screening.

(D) The dental care identified in an annual dental screening as required to ensure that a member meets the dental standards required for deployment in the event of mobilization.

(2) The services provided under this subsection shall be provided at no cost to the member.

(e)(1) A member of a uniformed service on active duty for health care or recuperation reasons, as described in paragraph (2), is entitled to medical and dental care on the same basis and to the same extent as members covered by section 1074(a) of this title while the member remains on active duty.

(2) Paragraph (1) applies to a member described in paragraph (1) or (2) of subsection (a) who, while being treated for (or recovering from) an injury, illness, or disease incurred or aggravated in the line of duty, is continued on active duty pursuant to a modification or extension of orders, or is ordered to active duty, so as to result in active duty for a period of more than 30 days.

(Added P.L. 98–94, § 1012(a)(1), Sept. 24, 1983, 97 Stat. 664; amended P.L. 98–525, § 631(a), Oct. 19, 1984, 98 Stat. 2542; P.L. 98–557, § 19(4), Oct. 30, 1984, 98 Stat. 2869; P.L. 99–145, § 1303(a)(7), Nov. 8, 1985, 99 Stat. 738; revised in its entirety P.L. 99–661, § 604(a)(1), Nov. 14, 1986, 100 Stat. 3874; P.L. 104–106, § 702(a), 704(a), Feb. 10, 1996, 110 Stat. 371, 372; P.L. 105–85, § 513(a), Nov. 18, 1997, 111 Stat. 1730; P.L. 106–65, §§ 578(i)(1), 705(b), Oct. 5, 1999, 113 Stat. 629, 683.)

§ 1074b. Transitional medical and dental care: members on active duty in support of contingency operations

(a) HEALTH CARE PROVIDED.—A member of the armed forces described in subsection (b), and the dependents of the member, shall be entitled to receive health care described in subsection (c) upon the release of the member from active duty in support of a contingency operation until the earlier of—

(1) 30 days after the date of the release of the member from active duty; or

(2) the date on which the member and the dependents of the member are covered by a health plan sponsored by an employer.

(b) ELIGIBLE MEMBER DESCRIBED.—A member of the armed forces referred to in subsection (a) is a member who—

(1) is a member of a reserve component and is called or ordered to active duty in support of a contingency operation;

(2) is involuntarily retained on active duty under section 12305 of this title in support of a contingency operation; or

(3) voluntarily agrees to remain on active duty for a period of less than one year in support of a contingency operation.

(c) HEALTH CARE DESCRIBED.—The health care referred to in subsection (a) is—

(1) medical and dental care available under section 1076 of this title in the same manner as such care is available for a dependent described in subsection (a)(2) of that section; and

(2) health benefits contracted for under the authority of section 1079(a) of this title and subject to the same rates and conditions as apply to persons covered under that section.

(Added P.L. 102–190, § 640(a)(2), Dec. 5, 1991, 105 Stat. 1385; amended P.L. 104–106, § 1501(c)(10), Feb. 10, 1996, 110 Stat. 499.)

§ 1074c. Medical care: authority to provide a wig

A person entitled to medical care under this chapter who has alopecia resulting from the treatment of a malignant disease may be furnished a wig if the person has not previously been furnished one at the expense of the United States.

(Added as § 1074b P.L. 98–525, § 1401(e)(2), Oct. 19, 1984, 98 Stat. 2616; redesignated § 1074c P.L. 102–190, § 640(a)(1), Dec. 5, 1991, 105 Stat. 1385.)

§ 1074d. Certain primary and preventive health care services

(a) SERVICES AVAILABLE.—(1) Female members and former members of the uniformed services entitled to medical care under section 1074 or 1074a of this title shall also be entitled to primary and preventive health care services for women as part of such medical care.

(2) Male members and former members of the uniformed services entitled to medical care under section 1074 or 1074a of this title shall also be entitled to preventive health care screening for colon or prostate cancer at such intervals and using such screening methods as the administering Secretaries consider appropriate.

(b) DEFINITION.—In this section, the term "primary and preventive health care services for women" means health care services, including related counseling services, provided to women with respect to the following:

(1) Papanicolaou tests (pap smear).

(2) Breast examinations and mammography.

(3) Comprehensive obstetrical and gynecological care, including care related to pregnancy and the prevention of pregnancy.

(4) Infertility and sexually transmitted diseases, including prevention.

(5) Menopause, including hormone replacement therapy and counseling regarding the benefits and risks of hormone replacement therapy.

(6) Physical or psychological conditions arising out of acts of sexual violence.

(7) Gynecological cancers.

(8) Colon cancer screening, at the intervals and using the screening methods prescribed under subsection (a)(2).

(Added P.L. 103–160, § 701(a)(1), Nov. 30, 1993, 107 Stat. 1685; amended P.L. 104–201, § 701(a)(1), (2)(A), Sept. 23, 1996, 110 Stat. 2587.)

§ 1074e. Medical care: certain Reserves who served in Southwest Asia during the Persian Gulf Conflict

(a) ENTITLEMENT TO MEDICAL CARE.—A member of the armed forces described in subsection (b) is entitled to medical care for a qualifying Persian Gulf symptom or illness to the same extent and under the same conditions (other than the requirement that the member be on active duty) as a member of a uniformed service who is entitled to such care under section 1074(a) of this title.

(b) COVERED MEMBERS.—Subsection (a) applies to a member of a reserve component who—

(1) is a Persian Gulf veteran;

(2) has a qualifying Persian Gulf symptom or illness; and

(3) is not otherwise entitled to medical care for such symptom or illness under this chapter and is not otherwise eligible for hospital care and medical services for such symptom or illness under section 1710 of title 38.

(c) DEFINITIONS.—In this section:

(1) The term "Persian Gulf veteran" means a member of the armed forces who served on active duty in the Southwest Asia theater of operations during the Persian Gulf Conflict.

(2) The term "qualifying Persian Gulf symptom or illness" means, with respect to a member described in subsection (b), a symptom or illness—

(A) that the member registered before September 1, 1997, in the Comprehensive Clinical Evaluation Program of the Department of Defense and that is presumed under section 721(d) of the National Defense Authorization Act for Fiscal Year 1995 (10 U.S.C. 1074 note) to be a result of service in the Southwest Asia theater of operations during the Persian Gulf Conflict; or

(B) that the member registered before September 1, 1997, in the Persian Gulf War Veterans Health Registry maintained by the Department of Veterans Affairs pursuant to section 702 of the Persian Gulf War Veterans' Health Status Act (38 U.S.C. 527 note).

(Added P.L. 105–85, § 764(a), Nov. 18, 1997, 111 Stat. 1825.)

§ 1074f. Medical tracking system for members deployed overseas

(a) SYSTEM REQUIRED.—The Secretary of Defense shall establish a system to assess the medical condition of members of the armed forces (including members of the reserve components) who are deployed outside the United States or its territories or possessions as part of a contingency operation (including a humanitarian operation, peacekeeping operation, or similar operation) or combat operation.

(b) ELEMENTS OF SYSTEM.—The system described in subsection (a) shall include the use of predeployment medical examinations and postdeployment medical examinations (including an assessment of mental health and the drawing of blood samples) to accurately record the medical condition of members before their deployment and any changes in their medical condition during the course of their deployment. The postdeployment examination shall be conducted when the member is redeployed or otherwise leaves an area in which the system is in operation (or as soon as possible thereafter).

(c) RECORDKEEPING.—The results of all medical examinations conducted under the system, records of all health care services (including immunizations) received by members described in subsection (a) in anticipation of their deployment or during the course of their deployment, and records of events occurring in the deployment area that may affect the health of such members shall be retained and maintained in a centralized location to improve future access to the records.

(d) QUALITY ASSURANCE.—The Secretary of Defense shall establish a quality assurance program to evaluate the success of the system in ensuring that members described in subsection (a) receive predeployment medical examinations and postdeployment medical examinations and that the recordkeeping requirements with respect to the system are met.

(Added P.L. 105–85, § 765(a), Nov. 18, 1997, 111 Stat. 1826.)

§ 1074g. Pharmacy benefits program [3]

(a) PHARMACY BENEFITS.—(1) The Secretary of Defense, after consulting with the other administering Secretaries, shall establish an effective, efficient, integrated pharmacy benefits program under

[3] Subsections (c) and (d) of section 701 of the National Defense Authorization Act for Fiscal Year 2000 (P.L. 106–65; 113 Stat. 680) provide:

(c) REPORTS REQUIRED.—Not later than April 1 and October 1 of fiscal years 2000 and 2001, the Secretary of Defense shall submit to Congress a report on—

(1) implementation of the uniform formulary required under subsection (a) of section 1074g of title 10, United States Code (as added by subsection (a));

(2) the results of a confidential survey conducted by the Secretary of prescribers for military medical treatment facilities and TRICARE contractors to determine—

(A) during the most recent fiscal year, how often prescribers attempted to prescribe non-formulary or non-preferred prescription drugs, how often such prescribers were able to do so, and whether covered beneficiaries were able to fill such prescriptions without undue delay;

(B) the understanding by prescribers of the reasons that military medical treatment facilities or civilian contractors preferred certain pharmaceuticals to others; and

(C) the impact of any restrictions on access to non-formulary prescriptions on the clinical decisions of the prescribers and the aggregate cost, quality, and accessibility of health care provided to covered beneficiaries;

(3) the operation of the Pharmacy Data Transaction Service required by subsection (e) of such section 1074g; and

(4) any other actions taken by the Secretary to improve management of the pharmacy benefits program under such section.

(d) STUDY FOR DESIGN OF PHARMACY BENEFIT FOR CERTAIN COVERED BENEFICIARIES.—(1) Not later than April 15, 2001, the Secretary of Defense shall prepare and submit to Congress—

(A) a study on a design for a comprehensive pharmacy benefit for covered beneficiaries under chapter 55 of title 10, United States Code, who are entitled to benefits under part A, and enrolled under part B, of title XVIII of the Social Security Act; and

(B) an estimate of the costs of implementing and operating such design.

(2) The design described in paragraph (1)(A) shall incorporate the elements of the pharmacy benefits program required to be established under section 1074g of title 10, United States Code (as added by subsection (a)).

this chapter (hereinafter in this section referred to as the "pharmacy benefits program").

(2)(A) The pharmacy benefits program shall include a uniform formulary of pharmaceutical agents, which shall assure the availability of pharmaceutical agents in the complete range of therapeutic classes. The selection for inclusion on the uniform formulary of particular pharmaceutical agents in each therapeutic class shall be based on the relative clinical and cost effectiveness of the agents in such class.

(B) In considering the relative clinical effectiveness of agents under subparagraph (A), the Secretary shall presume inclusion in a therapeutic class of a pharmaceutical agent, unless the Pharmacy and Therapeutics Committee established under subsection (b) finds that a pharmaceutical agent does not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome over the other drugs included on the uniform formulary.

(C) In considering the relative cost effectiveness of agents under subparagraph (A), the Secretary shall rely on the evaluation by the Pharmacy and Therapeutics Committee of the costs of agents in a therapeutic class in relation to the safety, effectiveness, and clinical outcomes of such agents.

(D) The Secretary shall establish procedures for the selection of particular pharmaceutical agents for the uniform formulary. Such procedures shall be established so as best to accomplish, in the judgment of the Secretary, the objectives set forth in paragraph (1). No pharmaceutical agent may be excluded from the uniform formulary except upon the recommendation of the Pharmacy and Therapeutics Committee. The Secretary shall begin to implement the uniform formulary not later than October 1, 2000.

(E) Pharmaceutical agents included on the uniform formulary shall be available to eligible covered beneficiaries through—

(i) facilities of the uniformed services, consistent with the scope of health care services offered in such facilities;

(ii) retail pharmacies designated or eligible under the TRICARE program or the Civilian Health and Medical Program of the Uniformed Services to provide pharmaceutical agents to covered beneficiaries; or

(iii) the national mail-order pharmacy program.

(3) The pharmacy benefits program shall assure the availability of clinically appropriate pharmaceutical agents to members of the armed forces, including, where appropriate, agents not included on the uniform formulary described in paragraph (2).

(4) The pharmacy benefits program may provide that prior authorization be required for certain pharmaceutical agents to assure that the use of such agents is clinically appropriate.

(5) The pharmacy benefits program shall assure the availability to eligible covered beneficiaries of pharmaceutical agents not included on the uniform formulary. Such pharmaceutical agents shall be available through at least one of the means described in paragraph (2)(E) under terms and conditions that may include cost sharing by the eligible covered beneficiary in addition to any such cost sharing applicable to agents on the uniform formulary.

(6) The Secretary, in the regulations prescribed under subsection (g), may establish cost sharing requirements (which may be established as a percentage or fixed dollar amount) under the pharmacy benefits program for generic, formulary, and nonformulary agents. For nonformulary agents, cost sharing shall be consistent with common industry practice and not in excess of amounts generally comparable to 20 percent for beneficiaries covered by section 1079 of this title or 25 percent for beneficiaries covered by section 1086 of this title.

(7) The Secretary shall establish procedures for eligible covered beneficiaries to receive pharmaceutical agents that are not included on the uniform formulary but that are considered to be clinically necessary. Such procedures shall include peer review procedures under which the Secretary may determine that there is a clinical justification for the use of a pharmaceutical agent that is not on the uniform formulary, in which case the pharmaceutical agent shall be provided under the same terms and conditions as an agent on the uniform formulary. Such procedures shall also include an expeditious appeals process for an eligible covered beneficiary, or a network or uniformed provider on behalf of the beneficiary, to establish clinical justification for the use of a pharmaceutical agent that is not on the uniform formulary.

(8) In carrying out this subsection, the Secretary shall ensure that an eligible covered beneficiary may continue to receive coverage for any maintenance pharmaceutical that is not on the uniform formulary and that was prescribed for the beneficiary before the date of the enactment of this section and stabilized the medical condition of the beneficiary.

(b) ESTABLISHMENT OF COMMITTEE.—(1) The Secretary of Defense shall, in consultation with the Secretaries of the military departments, establish a Pharmacy and Therapeutics Committee for the purpose of developing the uniform formulary of pharmaceutical agents required by subsection (a), reviewing such formulary on a periodic basis, and making additional recommendations regarding the formulary as the committee determines necessary and appropriate. The committee shall include representatives of pharmacies of the uniformed services facilities, contractors responsible for the TRICARE retail pharmacy program, contractors responsible for the national mail-order pharmacy program, providers in facilities of the uniformed services, and TRICARE network providers. Committee members shall have expertise in treating the medical needs of the populations served through such entities and in the range of pharmaceutical and biological medicines available for treating such populations. The committee shall function under procedures established by the Secretary under the regulations prescribed under subsection (g).

(2) Not later than 90 days after the establishment of the Pharmacy and Therapeutics Committee by the Secretary, the committee shall convene to design a proposed uniform formulary for submission to the Secretary. After such 90-day period, the committee shall meet at least quarterly and shall, during meetings, consider for inclusion on the uniform formulary under the standards established in subsection (a) any drugs newly approved by the Food and Drug Administration.

(c) ADVISORY PANEL.—(1) Concurrent with the establishment of the Pharmacy and Therapeutics Committee under subsection (b), the Secretary shall establish a Uniform Formulary Beneficiary Advisory Panel to review and comment on the development of the uniform formulary. The Secretary shall consider the comments of the panel before implementing the uniform formulary or implementing changes to the uniform formulary.

(2) The Secretary shall determine the size and membership of the panel established under paragraph (1), which shall include members that represent nongovernmental organizations and associations that represent the views and interests of a large number of eligible covered beneficiaries.

(d) PROCEDURES.—(1) In the operation of the pharmacy benefits program under subsection (a), the Secretary of Defense shall assure through management and new contractual arrangements that financial resources are aligned such that the cost of prescriptions is borne by the organization that is financially responsible for the health care of the eligible covered beneficiary.

(2) Effective not later than April 5, 2000, the Secretary shall use a modification to the bid price adjustment methodology in the current managed care support contracts to ensure equitable and timely reimbursement to the TRICARE managed care support contractors for pharmaceutical products delivered in the nonmilitary environments. The methodology shall take into account the "at-risk" nature of the contracts as well as managed care support contractor pharmacy costs attributable to changes to pharmacy service or formulary management at military medical treatment facilities, and other military activities and policies that affect costs of pharmacy benefits provided through the Civilian Health and Medical Program of the Uniformed Services. The methodology shall also account for military treatment facility costs attributable to the delivery of pharmaceutical products in the military facility environment which were prescribed by a network provider.

(e) PHARMACY DATA TRANSACTION SERVICE.—The Secretary of Defense shall implement the use of the Pharmacy Data Transaction Service in all fixed facilities of the uniformed services under the jurisdiction of the Secretary, in the TRICARE retail pharmacy program, and in the national mail-order pharmacy program.

(f) DEFINITIONS.—In this section:

(1) The term "eligible covered beneficiary" means a covered beneficiary for whom eligibility to receive pharmacy benefits through the means described in subsection (a)(2)(E) is established under this chapter or another provision of law.

(2) The term "pharmaceutical agent" means drugs, biological products, and medical devices under the regulatory authority of the Food and Drug Administration.

(g) REGULATIONS.—The Secretary of Defense shall, after consultation with the other administering Secretaries, prescribe regulations to carry out this section.

(Added P.L. 106–65, § 701(a)(1), Oct. 5, 1999, 113 Stat. 677; P.L. 106–398, § 1[1087(a)(5)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290.)

§ 1074h. Medical and dental care: medal of honor recipients; dependents

(a) MEDAL OF HONOR RECIPIENTS.—A former member of the armed forces who is a Medal of Honor recipient and who is not otherwise entitled to medical and dental benefits under this chapter may, upon request, be given medical and dental care provided by the administering Secretaries in the same manner as if entitled to retired pay.

(b) IMMEDIATE DEPENDENTS.—A person who is an immediate dependent of a Medal of Honor recipient and who is not otherwise entitled to medical and dental benefits under this chapter may, upon request, be given medical and dental care provided by the administering Secretaries in the same manner as if the Medal of Honor recipient were, or (if deceased) was at the time of death, entitled to retired pay.

(c) DEFINITIONS.—In this section:

(1) The term "Medal of Honor recipient" means a person who has been awarded a medal of honor under section 3741, 6241, or 8741 of this title or section 491 of title 14.

(2) The term "immediate dependent" means a dependent described in subparagraph (A), (B), (C), or (D) of section 1072(2) of this title.

(Added P.L. 106–398, § 1[706(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–175.)

§ 1074i. Reimbursement for certain travel expenses

In any case in which a covered beneficiary is referred by a primary care physician to a specialty care provider who provides services more than 100 miles from the location in which the primary care provider provides services to the covered beneficiary, the Secretary shall provide reimbursement for reasonable travel expenses for the covered beneficiary.

(Added P.L. 106–398, § 1[758(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–199.)

§ 1075. Officers and certain enlisted members: subsistence charges

When an officer or former officer of a uniformed service, or an enlisted member of a uniformed service entitled to basic allowance for subsistence, is hospitalized under section 1074 of this title, he shall pay an amount equal to the part of the charge prescribed under section 1078 of this title that is attributable to subsistence. An enlisted member, or former enlisted member, of a uniformed service who is entitled to retired or retainer pay, or equivalent pay may not be so charged.

(Added P.L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1447; amended P.L. 97–22, § 10(b)(2), July 10, 1981, 95 Stat. 137.)

§ 1076. Medical and dental care for dependents: general rule

(a)(1) A dependent described in paragraph (2) is entitled, upon request, to the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff.

(2) A dependent referred to in paragraph (1) is a dependent of a member of a uniformed service described in one of the following subparagraphs:

(A) A member who is on active duty for a period of more than 30 days or died while on that duty.

(B) A member who died from an injury, illness, or disease incurred or aggravated—

(i) while the member was on active duty under a call or order to active duty of 30 days or less, on active duty for training, or on inactive-duty training; or

(ii) while the member was traveling to or from the place at which the member was to perform, or had performed, such active duty, active duty for training, or inactive-duty training.

(C) A member who died from an injury, illness, or disease incurred or aggravated in the line of duty while the member remained overnight immediately before the commencement of inactive-duty training, or while the member remained overnight between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training, if the site was outside reasonable commuting distance from the member's residence.

(D) A member on active duty who is entitled to benefits under subsection (e) of section 1074a of this title by reason of paragraph (1), (2), or (3) of subsection (a) of such section.

(E) A member who died from an injury, illness, or disease incurred or aggravated while the member—

(i) was serving on funeral honors duty under section 12503 of this title or section 115 of title 32;

(ii) was traveling to or from the place at which the member was to so serve; or

(iii) remained overnight at or in the vicinity of that place immediately before so serving, if the place is outside reasonable commuting distance from the member's residence.

(b) Under regulations to be prescribed jointly by the administering Secretaries, a dependent of a member or former member—

(1) who is, or (if deceased) was at the time of his death, entitled to retired or retainer pay or equivalent pay; or

(2) who died before attaining age 60 and at the time of his death would have been eligible for retired pay under chapter 1223 of this title (or under chapter 67 of this title as in effect before December 1, 1994) but for the fact that he was under 60 years of age;

may, upon request, be given the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff, except that a dependent of a member or former member described in paragraph (2) may not be given such medical or dental care until the date on which such member or former member would have attained age 60.

(c) A determination by the medical or dental officer in charge, or the contract surgeon in charge, or his designee, as to the availability of space and facilities and to the capabilities of the medical

and dental staff is conclusive. Care under this section may not be permitted to interfere with the primary mission of those facilities.

(d) To utilize more effectively the medical and dental facilities of the uniformed services, the administering Secretaries shall prescribe joint regulations to assure that dependents entitled to medical or dental care under this section will not be denied equal opportunity for that care because the facility concerned is that of a uniformed service other than that of the member.

(e)(1) Subject to paragraph (3), the administering Secretary shall furnish an abused dependent of a former member of a uniformed service described in paragraph (4), during that period that the abused dependent is in receipt of transitional compensation under section 1059 of this title, with medical and dental care, including mental health services, in facilities of the uniformed services in accordance with the same eligibility and benefits as were applicable for that abused dependent during the period of active service of the former member.

(2) Subject to paragraph (3), upon request of any dependent of a former member of a uniformed service punished for an abuse described in paragraph (4), the administering Secretary for such uniformed service may furnish medical care in facilities of the uniformed services to the dependent for the treatment of any adverse health condition resulting from such dependent's knowledge of (A) the abuse, or (B) any injury or illness suffered by the abused person as a result of such abuse.

(3) Medical and dental care furnished to a dependent of a former member of the uniformed services in facilities of the uniformed services under paragraph (1) or (2)—

(A) shall be limited to the health care prescribed by section 1077 of this title; and

(B) shall be subject to the availability of space and facilities and the capabilities of the medical and dental staff.

(4)(A) A former member of a uniformed service referred to in paragraph (1) is a member who—

(i) received a dishonorable or bad-conduct discharge or was dismissed from a uniformed service as a result of a court-martial conviction for an offense, under either military or civil law, involving abuse of a dependent of the member; or

(ii) was administratively discharged from a uniformed service as a result of such an offense.

(B) A determination of whether an offense involved abuse of a dependent of the member shall be made in accordance with regulations prescribed by the administering Secretary for such uniformed service.

(f)(1) The administering Secretaries shall furnish an eligible dependent a physical examination that is required by a school in connection with the enrollment of the dependent as a student in that school.

(2) A dependent is eligible for a physical examination under paragraph (1) if the dependent—

(A) is entitled to receive medical care under subsection (a) or is authorized to receive medical care under subsection (b); and

(B) is at least 5 years of age and less than 12 years of age.

(3) Nothing in paragraph (2) may be construed to prohibit the furnishing of a school-required physical examination to any dependent who, except for not satisfying the age requirement under that paragraph, would otherwise be eligible for a physical examination required to be furnished under this subsection.

(Added P.L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1447; amended P.L. 89–614, § 2(3), Sept. 30, 1966, 80 Stat. 862; P.L. 95–397, § 301, Sept. 30, 1978, 92 Stat. 849; P.L. 96–513, § 511(36), Dec. 12, 1980, 94 Stat. 2923; P.L. 97–252, § 1004(b), Sept. 8, 1982, 96 Stat. 737; P.L. 98–557, § 19(5), Oct. 30, 1984, 98 Stat. 2869; P.L. 99–145, § 652(a), Nov. 8, 1985, 99 Stat. 656; P.L. 99–661, §§ 604(f)(1)(C), 652(c), Nov. 14, 1986, 100 Stat. 3877, 3889; P.L. 100–456, § 651(a), Sept. 29, 1988, 102 Stat. 1990; P.L. 101–189, §§ 653(a)(4), 731(c)(1), Nov. 29, 1989, 103 Stat. 1462, 1482; P.L. 103–337, §§ 704(a), (b), 1671(c)(7)(A), 108 Stat. 2798, 3014; P.L. 104–106, § § 703, 1501(c)(11), Feb. 10, 1996, 110 Stat. 372, 499; P.L. 105–85, § 513(b), Nov. 18, 1997, 111 Stat. 1730; P.L. 105–261, § 732, Oct. 17, 1998, 112 Stat. 2071; P.L. 106–65, §§ 578(i)(2), 705(c), Oct. 5, 1999, 113 Stat. 629, 684; P.L. 106–398, § 1[703], Oct. 30, 2000, 114 Stat. 1654, 1654A–174.)

§ 1076a. TRICARE dental program

(a) ESTABLISHMENT OF DENTAL PLANS.—The Secretary of Defense may establish, and in the case of the dental plan described in paragraph (1) shall establish, the following voluntary enrollment dental plans:

(1) PLAN FOR SELECTED RESERVE AND INDIVIDUAL READY RESERVE.—A dental insurance plan for members of the Selected Reserve of the Ready Reserve and for members of the Individual Ready Reserve described in subsection 10144(b) of this title.

(2) PLAN FOR OTHER RESERVES.—A dental insurance plan for members of the Individual Ready Reserve not eligible to enroll in the plan established under paragraph (1).

(3) PLAN FOR ACTIVE DUTY DEPENDENTS.—Dental benefits plans for eligible dependents of members of the uniformed services who are on active duty for a period of more than 30 days.

(4) PLAN FOR READY RESERVE DEPENDENTS.—A dental benefits plan for eligible dependents of members of the Ready Reserve of the reserve components who are not on active duty for more than 30 days.

(b) ADMINISTRATION OF PLANS.—The plans established under this section shall be administered under regulations prescribed by the Secretary of Defense in consultation with the other administering Secretaries.

(c) CARE AVAILABLE UNDER PLANS.—Dental plans established under subsection (a) may provide for the following dental care:

(1) Diagnostic, oral examination, and preventive services and palliative emergency care.

(2) Basic restorative services of amalgam and composite restorations, stainless steel crowns for primary teeth, and dental appliance repairs.

(3) Orthodontic services, crowns, gold fillings, bridges, complete or partial dentures, and such other services as the Secretary of Defense considers to be appropriate.

(d) PREMIUMS.—

(1) PREMIUM SHARING PLANS.—(A) The dental insurance plan established under subsection (a)(1) and the dental benefits plans established under subsection (a)(3) are premium sharing plans.

(B) Members enrolled in a premium sharing plan for themselves or for their dependents shall be required to pay a share of the premium charged for the benefits provided under the plan. The member's share of the premium charge may not exceed $20 per month for the enrollment.

(C) Effective as of January 1 of each year, the amount of the premium required under subparagraph (A) shall be increased by the percent equal to the lesser of—

(i) the percent by which the rates of basic pay of members of the uniformed services are increased on such date; or

(ii) the sum of one-half percent and the percent computed under section 5303(a) of title 5 for the increase in rates of basic pay for statutory pay systems for pay periods beginning on or after such date.

(D) The Secretary of Defense may reduce the monthly premium required to be paid under paragraph (1) in the case of enlisted members in pay grade E–1, E–2, E–3, or E–4 if the Secretary determines that such a reduction is appropriate to assist such members to participate in a dental plan referred to in subparagraph (A).

(2) FULL PREMIUM PLANS.—(A) The dental insurance plan established under subsection (a)(2) and the dental benefits plan established under subsection (a)(4) are full premium plans.

(B) Members enrolled in a full premium plan for themselves or for their dependents shall be required to pay the entire premium charged for the benefits provided under the plan.

(3) PAYMENT PROCEDURES.—A member's share of the premium for a plan established under subsection (a) may be paid by deductions from the basic pay of the member and from compensation paid under section 206 of title 37, as the case may be. The regulations prescribed under subsection (b) shall specify the procedures for payment of the premiums by enrollees who do not receive such pay.

(e) COPAYMENTS UNDER PREMIUM SHARING PLANS.—A member or dependent who receives dental care under a premium sharing plan referred to in subsection (d)(1) shall—

(1) in the case of care described in subsection (c)(1), pay no charge for the care;

(2) in the case of care described in subsection (c)(2), pay 20 percent of the charges for the care; and

(3) in the case of care described in subsection (c)(3), pay a percentage of the charges for the care that is determined appropriate by the Secretary of Defense, after consultation with the other administering Secretaries.

(f) TRANSFER OF MEMBERS.—If a member whose dependents are enrolled in the plan established under subsection (a)(3) is transferred to a duty station where dental care is provided to the member's eligible dependents under a program other than that plan, the member may discontinue participation under the plan. If the member is later transferred to a duty station where dental care is not provided to such member's eligible dependents except under

the plan established under subsection (a)(3), the member may reenroll the dependents in that plan.

(g) CARE OUTSIDE THE UNITED STATES.—The Secretary of Defense may exercise the authority provided under subsection (a) to establish dental insurance plans and dental benefits plans for dental benefits provided outside the United States for the eligible members and dependents of members of the uniformed services. In the case of such an overseas dental plan, the Secretary may waive or reduce any copayments required by subsection (e) to the extent the Secretary determines appropriate for the effective and efficient operation of the plan.

(h) WAIVER OF REQUIREMENTS FOR SURVIVING DEPENDENTS.—The Secretary of Defense may waive (in whole or in part) any requirements of a dental plan established under this section as the Secretary determines necessary for the effective administration of the plan for a dependent who is an eligible dependent described in subsection (k)(2).

(i) AUTHORITY SUBJECT TO APPROPRIATIONS.—The authority of the Secretary of Defense to enter into a contract under this section for any fiscal year is subject to the availability of appropriations for that purpose.

(j) LIMITATION ON REDUCTION OF BENEFITS.—The Secretary of Defense may not reduce benefits provided under a plan established under this section until—

(1) the Secretary provides notice of the Secretary's intent to reduce such benefits to the Committees on Armed Services of the Senate and the House of Representatives; and

(2) one year has elapsed following the date of such notice.

(k) ELIGIBLE DEPENDENT DEFINED.—In this section, the term "eligible dependent"—

(1) means a dependent described in subparagraph (A), (D), or (I) of section 1072(2) of this title; and

(2) includes any such dependent of a member who dies while on active duty for a period of more than 30 days or a member of the Ready Reserve if the dependent is enrolled on the date of the death of the member in a dental benefits plan established under subsection (a), except that the term does not include the dependent after the end of the three-year period beginning on the date of the member's death.

(Added P.L. 99–145, § 651(a), Nov. 8, 1985, 99 Stat. 655; amended P.L. 99–661, § 707 (a), (b), Nov. 14, 1986, 100 Stat. 3905; P.L. 102–90, § 701, Dec. 5, 1991, 105 Stat. 1399; P.L. 102–484, § 701(a)–(e), Oct. 23, 1992, 106 Stat. 2430; P.L. 103–337, § 702(b), 703(a), 707(b), Oct. 5, 1994, 108 Stat. 2797, 2798, 2800; P.L. 105–85, § 732, Nov. 18, 1997, 111 Stat. 1812; P.L. 105–261, § 701(a), (b), Oct. 17, 1998, 112 Stat. 2056; amended in its entirety P.L. 106–65, § 711(a), Oct. 5, 1999, 113 Stat. 685; P.L. 106–398, § 1[704(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–174.)

[§ 1076b. Repealed. P.L. 106–65, § 711(a), Oct. 5, 1999, 113 Stat. 685]

§ 1076c. Dental insurance plan: certain retirees and their surviving spouses and other dependents

(a) REQUIREMENT FOR PLAN.—The Secretary of Defense, in consultation with the other administering Secretaries, shall establish a dental insurance plan for retirees of the uniformed services, certain unremarried surviving spouses, and dependents in accordance with this section.

(b) PERSONS ELIGIBLE FOR PLAN.—The following persons are eligible to enroll in the dental insurance plan established under subsection (a):

(1) Members of the uniformed services who are entitled to retired pay.

(2) Members of the Retired Reserve who would be entitled to retired pay under chapter 1223 of this title but for being under 60 years of age.

(3) Eligible dependents of a member described in paragraph (1) or (2) who are covered by the enrollment of the member in the plan.

(4) Eligible dependents of a member described in paragraph (1) or (2) who is not enrolled in the plan and who—

(A) is enrolled under section 1705 of title 38 to receive dental care from the Secretary of Veterans Affairs;

(B) is enrolled in a dental plan that—

(i) is available to the member as a result of employment by the member that is separate from the military service of the member; and

(ii) is not available to dependents of the member as a result of such separate employment by the member; or

(C) is prevented by a medical or dental condition from being able to obtain benefits under the plan.

(5) The unremarried surviving spouse and eligible child dependents of a deceased member—

(A) who died while in a status described in paragraph (1) or (2);

(B) who is described in section 1448(d)(1) of this title; or

(C) who died while on active duty for a period of more than 30 days and whose eligible dependents are not eligible, or no longer eligible, for dental benefits under section 1076a of this title.

(c) PREMIUMS.—(1) A member enrolled in the dental insurance plan established under subsection (a) shall pay the premiums charged for the insurance coverage.

(2) The Secretary of Defense shall establish procedures for the collection of the premiums charged for coverage by the dental insurance plan. To the maximum extent practicable, the premiums payable by a member entitled to retired pay shall be deducted and withheld from the retired pay of the member (if pay is available to the member).

(d) BENEFITS AVAILABLE UNDER THE PLAN.—The dental insurance plan established under subsection (a) shall provide benefits for dental care and treatment which may be comparable to the benefits authorized under section 1076a of this title for plans established under that section and shall include diagnostic services, preventative services, endodontics and other basic restorative services, surgical services, and emergency services.

(e) COVERAGE.—(1) The Secretary shall prescribe a minimum required period for enrollment by a member or surviving spouse in the dental insurance plan established under subsection (a).

(2) The dental insurance plan shall provide for voluntary enrollment of participants and shall authorize a member or eligible unremarried surviving spouse to enroll for self only or for self and eligible dependents.

(f) REQUIRED TERMINATIONS OF ENROLLMENT.—The Secretary shall terminate the enrollment of any enrollee, and any eligible dependents of the enrollee covered by the enrollment, in the dental insurance plan established under subsection (a) upon the occurrence of the following:

(1) In the case of an enrollment under subsection (b)(1), termination of the member's entitlement to retired pay.

(2) In the case of an enrollment under subsection (b)(2), termination of the member's status as a member of the Retired Reserve.

(3) In the case of an enrollment under subsection (b)(5), remarriage of the surviving spouse.

(g) CONTINUATION OF DEPENDENTS' ENROLLMENT UPON DEATH OF ENROLLEE.—Coverage of a dependent in the dental insurance plan established under subsection (a) under an enrollment of a member or a surviving spouse who dies during the period of enrollment shall continue until the end of that period and may be renewed by (or for) the dependent, so long as the premium paid is sufficient to cover continuation of the dependent's enrollment. The Secretary may terminate coverage of the dependent when the premiums paid are no longer sufficient to cover continuation of the enrollment. The Secretary shall prescribe in regulations under subsection (h) the parties responsible for paying the remaining premiums due on the enrollment and the manner for collection of the premiums.

(h) REGULATIONS.—The dental insurance plan established under subsection (a) shall be administered under regulations prescribed by the Secretary of Defense, in consultation with the other administering Secretaries.

(i) VOLUNTARY DISENROLLMENT.—(1) With respect to enrollment in the dental insurance plan established under subsection (a), the Secretary of Defense—

(A) shall allow for a period of up to 30 days at the beginning of the prescribed minimum enrollment period during which an enrollee may disenroll; and

(B) shall provide for limited circumstances under which disenrollment shall be permitted during the prescribed enrollment period, without jeopardizing the fiscal integrity of the dental program.

(2) The circumstances described in paragraph (1)(B) shall include—

(A) a case in which a retired member, surviving spouse, or dependent of a retired member who is also a Federal employee is assigned to a location outside the jurisdiction of the dental insurance plan established under subsection (a) that prevents utilization of dental benefits under the plan;

(B) a case in which a retired member, surviving spouse, or dependent of a retired member is prevented by a serious medical condition from being able to obtain benefits under the plan;

(C) a case in which severe financial hardship would result; and

(D) any other circumstances which the Secretary considers appropriate.

(3) The Secretary shall establish procedures for timely decisions on requests for disenrollment under this section and for appeal to the TRICARE Management Activity of adverse decisions.

(j) DEFINITIONS.—In this section:

(1) The term "eligible dependent" means a dependent described in subparagraph (A), (D), or (I) of section 1072(2) of this title.

(2) The term "eligible child dependent" means a dependent described in subparagraph (D) or (I) of section 1072(2) of this title.

(3) The term "retired pay" includes retainer pay.

(Added P.L. 104–201, § 703(a)(1), Sept. 23, 1996, 110 Stat. 2588; amended P.L. 105–85, § 701, 733(b), 734, Nov. 18, 1997, 111 Stat. 1807, 1812, 1813; P.L. 105–261, § 702, Oct. 17, 1998, 112 Stat. 2056; P.L. 106–65, § 704, Oct. 5, 1999, 113 Stat. 683; P.L. 106–398, § 1[726, 1087(a)(6)], Oct. 30, 2000, 114 Stat. 1654, 1654A–187, 1654A–290.)

§ 1077. Medical care for dependents: authorized care in facilities of uniformed services

(a) Only the following types of health care may be provided under section 1076 of this title:

(1) Hospitalization.

(2) Outpatient care.

(3) Drugs.

(4) Treatment of medical and surgical conditions.

(5) Treatment of nervous, mental, and chronic conditions.

(6) Treatment of contagious diseases.

(7) Physical examinations, including eye examinations, and immunizations.

(8) Maternity and infant care, including well-baby care that includes one screening of an infant for the level of lead in the blood of the infant.

(9) Diagnostic tests and services, including laboratory and X-ray examinations.

(10) Dental care.

(11) Ambulance service and home calls when medically necessary.

(12) Durable equipment, such as wheelchairs, iron lungs, and hospital beds may be provided on a loan basis.

(13) Primary and preventive health care services for women (as defined in section 1074d(b) of this title).

(14) Preventive health care screening for colon or prostate cancer, at the intervals and using the screening methods prescribed under section 1074d(a)(2) of this title.

(15) Prosthetic devices, as determined by the Secretary of Defense to be necessary because of significant conditions resulting from trauma, congenital anomalies, or disease.

(b) The following types of health care may not be provided under section 1076 of this title:

(1) Domiciliary or custodial care.

(2) Hearing aids, orthopedic footwear, and spectacles, except that, outside of the United States and at stations inside

the United States where adequate civilian facilities are unavailable, such items may be sold to dependents at cost to the United States.

(3) The elective correction of minor dermatological blemishes and marks or minor anatomical anomalies.

(c) A dependent participating under a dental plan established under section 1076a of this title may not be provided dental care under section 1076(a) of this title except for emergency dental care, dental care provided outside the United States, and dental care that is not covered by such plan.

(d)(1) Notwithstanding subsection (b)(1), hospice care may be provided under section 1076 of this title in facilities of the uniformed services to a terminally ill patient who chooses (pursuant to regulations prescribed by the Secretary of Defense in consultation with the other administering Secretaries) to receive hospice care rather than continuing hospitalization or other health care services for treatment of the patient's terminal illness.

(2) In this section, the term "hospice care" means the items and services described in section 1861(dd) of the Social Security Act (42 U.S.C. 1395x(dd)).

(Added P.L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1447; amended P.L. 89–614, § 2(4), Sept. 30, 1966, 80 Stat. 863; P.L 98–525, § 633(a), §§ 1401(e)(3), 1405(22), Oct. 19, 1984, 98 Stat. 2544, 2617, 2623; P.L. 99–145, § 702(a), § 703, Nov. 8, 1985, 99 Stat. 655; P.L. 102–190, §§ 702(a), 703, Dec. 5, 1991, 105 Stat. 1400, 1401; P.L. 103–160, § 701(b), Nov. 30, 1993, 107 Stat. 1686; P.L. 103–337, §§ 703(b), 705, Oct. 5, 1994, 108 Stat. 2798, 2799; P.L. 104–201, § 701(b)(1), Sept. 23, 1996, 110 Stat. 2587; P.L. 105–85, § 702(b), Nov. 18, 1997, 111 Stat. 1807.)

§ 1078. Medical and dental care for dependents: charges

(a) The Secretary of Defense, after consulting the other administering Secretaries, shall prescribe fair charges for inpatient medical and dental care given to dependents under section 1076 of this title. The charge or charges prescribed shall be applied equally to all classes of dependents.

(b) As a restraint on excessive demands for medical and dental care under section 1076 of this title, uniform minimal charges may be imposed for outpatient care. Charges may not be more than such amounts, if any, as the Secretary of Defense may prescribe after consulting the other administering Secretaries, and after a finding that such charges are necessary.

(c) Amounts received for subsistence and medical and dental care given under section 1076 of this title shall be deposited to the credit of the appropriation supporting the maintenance and operation of the facility furnishing the care.

(Added P.L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1448; amended P.L. 89–614, § 2(5), Sept. 30, 1966, 80 Stat. 863; P.L. 96–513, § 511(36), Dec. 12, 1980, 94 Stat. 2923; P.L. 98–557, § 19(6), Oct. 30, 1984, 98 Stat. 2869; P.L. 102–325, § 414, July 23, 1992, 106 Stat. 513).

§ 1078a. Continued health benefits coverage

(a) PROVISION OF CONTINUED HEALTH COVERAGE.—The Secretary of Defense shall implement and carry out a program of continued health benefits coverage in accordance with this section to provide persons described in subsection (b) with temporary health benefits comparable to the health benefits provided for former civilian employees of the Federal Government and other persons under section 8905a of title 5.

(b) ELIGIBLE PERSONS.—The persons referred to in subsection (a) are the following:

(1) A member of the armed forces who—

(A) is discharged or released from active duty (or full-time National Guard duty), whether voluntarily or involuntarily, under other than adverse conditions, as characterized by the Secretary concerned;

(B) immediately preceding that discharge or release, is entitled to medical and dental care under section 1074(a) of this title (except in the case of a member discharged or released from full-time National Guard duty); and

(C) after that discharge or release and any period of transitional health care provided under section 1145(a) of this title, would not otherwise be eligible for any benefits under this chapter.

(2) A person who—

(A) ceases to meet the requirements for being considered an unmarried dependent child of a member or former member of the armed forces under section 1072(2)(D) of this title or ceases to meet the requirements for being considered an unmarried dependent under section 1072(2)(I) of this title;

(B) on the day before ceasing to meet those requirements, was covered under a health benefits plan under this chapter or transitional health care under section 1145(a) of this title as a dependent of the member or former member; and

(C) would not otherwise be eligible for any benefits under this chapter.

(3) A person who—

(A) is an unremarried former spouse of a member or former member of the armed forces; and

(B) on the day before the date of the final decree of divorce, dissolution, or annulment was covered under a health benefits plan under this chapter or transitional health care under section 1145(a) of this title as a dependent of the member or former member; and

(C) is not a dependent of the member or former member under subparagraph (F) or (G) of section 1072(2) of this title or ends a one-year period of dependency under subparagraph (H) of such section.

(c) NOTIFICATION OF ELIGIBILITY.—(1) The Secretary of Defense shall prescribe regulations to provide for persons described in subsection (b) to be notified of eligibility to receive health benefits under this section.

(2) In the case of a member who becomes (or will become) eligible for continued coverage under subsection (b)(1), the regulations shall provide for the Secretary concerned to notify the member of the member's rights under this section as part of preseparation counseling conducted under section 1142 of this title or any other provision of other law.

(3) In the case of a dependent of a member or former member who becomes eligible for continued coverage under subsection (b)(2), the regulations shall provide that—

(A) the member or former member may submit to the Secretary concerned a written notice of the dependent's change in status (including the dependent's name, address, and such other information as the Secretary of Defense may require); and

(B) the Secretary concerned shall, within 14 days after receiving that notice, inform the dependent of the dependent's rights under this section.

(4) In the case of a former spouse of a member or former member who becomes eligible for continued coverage under subsection (b)(3), the regulations shall provide appropriate notification provisions and a 60-day election period under subsection (d)(3).

(d) ELECTION OF COVERAGE.—In order to obtain continued coverage under this section, an appropriate written election (submitted in such manner as the Secretary of Defense may prescribe) shall be made as follows:

(1) In the case of a member described in subsection (b)(1), the written election shall be submitted to the Secretary concerned before the end of the 60-day period beginning on the later of—

(A) the date of the discharge or release of the member from active duty or full-time National Guard duty;

(B) the date on which the period of transitional health care applicable to the member under section 1145(a) of this title ends; or

(C) the date the member receives the notification required pursuant to subsection (c).

(2)(A) In the case of a dependent of a member or former member who becomes eligible for continued coverage under subsection (b)(2), the written election shall be submitted to the Secretary concerned before the end of the 60-day period beginning on the later of—

(i) the date on which the dependent first ceases to meet the requirements for being considered a dependent under subparagraph (D) or (I) of section 1072(2) of this title; or

(ii) the date the dependent receives the notification pursuant to subsection (c).

(B) Notwithstanding subparagraph (A), if the Secretary concerned determines that the dependent's parent has failed to provide the notice referred to in subsection (c)(3)(A) with respect to the dependent in a timely fashion, the 60-day period under this paragraph shall be based only on the date under subparagraph (A)(i).

(3) In the case of a former spouse of a member or a former member who becomes eligible for continued coverage under subsection (b)(3), the written election shall be submitted to the Secretary concerned before the end of the 60-day period beginning on the later of—

(A) the date as of which the former spouse first ceases to meet the requirements for being considered a dependent under section 1072(2) of this title; or

(B) such other date as the Secretary of Defense may prescribe.

(e) COVERAGE OF DEPENDENTS.—A person eligible under subsection (b)(1) to elect to receive coverage may elect coverage either as an individual or, if appropriate, for self and dependents. A person eligible under subsection (b)(2) or subsection (b)(3) may elect only individual coverage.

(f) CHARGES.—(1) Under arrangements satisfactory to the Secretary of Defense, a person receiving continued coverage under this section shall be required to pay into the Military Health Care Account or other appropriate account an amount equal to the sum of—

(A) the employee and agency contributions which would be required in the case of a similarly situated employee enrolled in a comparable health benefits plan under section 8905a(d)(1)(A)(i) of title 5; and

(B) an amount, not to exceed 10 percent of the amount determined under subparagraph (A), determined under regulations prescribed by the Secretary of Defense to be necessary for administrative expenses; and

(2) If a person elects to continue coverage under this section before the end of the applicable period under subsection (d), but after the person's coverage under this chapter (and any transitional extension of coverage under section 1145(a) of this title) expires, coverage shall be restored retroactively, with appropriate contributions (determined in accordance with paragraph (1)) and claims (if any), to the same extent and effect as though no break in coverage had occurred.

(g) PERIOD OF CONTINUED COVERAGE.—(1) Continued coverage under this section may not extend beyond—

(A) in the case of a member described in subsection (b)(1), the date which is 18 months after the date the member ceases to be entitled to care under section 1074(a) of this title and any transitional care under section 1145 of this title, as the case may be;

(B) in the case of a person described in subsection (b)(2), the date which is 36 months after the date on which the person first ceases to meet the requirements for being considered a dependent under subparagraph (D) or (I) of section 1072(2) of this title; and

(C) in the case of a person described in subsection (b)(3), except as provided in paragraph (4), the date which is 36 months after the later of—

(i) the date on which the final decree of divorce, dissolution, or annulment occurs; and

(ii) if applicable, the date the one-year extension of dependency under section 1072(2)(H) of this title expires.

(2) Notwithstanding paragraph (1)(B), if a dependent of a member becomes eligible for continued coverage under subsection (b)(2) during a period of continued coverage of the member for self and dependents under this section, extended coverage of the dependent under this section may not extend beyond the date which is 36 months after the date the member became ineligible for medical and dental care under section 1074(a) of this title and any transitional health care under section 1145(a) of this title.

(3) Notwithstanding paragraph (1)(C), if a person becomes eligible for continued coverage under subsection (b)(3) as the former spouse of a member during a period of continued coverage of the member for self and dependents under this section, extended coverage of the former spouse under this section may not extend beyond the date which is 36 months after the date the member became ineligible for medical and dental care under section 1074(a) of this title and any transitional health care under section 1145(a) of this title.

(4)(A) Notwithstanding paragraph (1), in the case of a former spouse described in subparagraph (B), continued coverage under this section shall continue for such period as the former spouse may request.

(B) A former spouse referred to in subparagraph (A) is a former spouse of a member or former member (other than a former spouse whose marriage was dissolved after the separation of the member from the service unless such separation was by retirement)—

(i) who has not remarried before age 55 after the marriage to the employee, former employee, or annuitant was dissolved;

(ii) who was enrolled in an approved health benefits plan under this chapter as a family member at any time during the 18-month period before the date of the divorce, dissolution, or annulment; and

(iii)(I) who is receiving any portion of the retired or retainer pay of the member or former member or an annuity based on the retired or retainer pay of the member; or

(II) for whom a court order (as defined in section 1408(a)(2) of this title) has been issued for payment of any portion of the retired or retainer pay or for whom a court order (as defined in section 1447(13) of this title) or a written agreement (whether voluntary or pursuant to a court order) provides for an election by the member or former member to provide an annuity to the former spouse.

(Added P.L. 102–484, § 4408(a)(1), Oct. 23, 1992, 106 Stat. 2708; amended P.L. 103–35, § 201(g)(1), May 31, 1993, 107 Stat. 99; P.L. 103–337, § 702(c), Oct. 5, 1994, 108 Stat. 2798; P.L. 104–201, § 1074(a)(4), Sept. 23, 1996, 110 Stat. 2658; P.L. 105–85, § 1073(a)(17), Nov. 18, 1997, 111 Stat. 1901.)

§ 1079. Contracts for medical care for spouses and children: plans

(a) To assure that medical care is available for dependents, as described in subparagraphs (A), (D), and (I) of section 1072(2) of this title, of members of the uniformed services who are on active duty for a period of more than 30 days, the Secretary of Defense, after consulting with the other administering Secretaries, shall contract, under the authority of this section, for medical care for those persons under such insurance, medical service, or health plans as he considers appropriate. The types of health care authorized under this section shall be the same as those provided under section 1076 of this title, except as follows:

(1) With respect to dental care, only that care required as a necessary adjunct to medical or surgical treatment may be provided.

(2) Consistent with such regulations as the Secretary of Defense may prescribe regarding the content of health promotion and disease prevention visits, the schedule of pap smears and mammograms, the schedule and method of colon and prostate cancer screenings, and the types and schedule of immunizations—

(A) for dependents under six years of age, both health promotion and disease prevention visits and immunizations may be provided; and

(B) for dependents six years of age or older, health promotion and disease prevention visits may be provided in connection with immunizations or with diagnostic or preventive pap smears and mammograms or colon and prostate cancer screenings.

(3) Not more than one eye examination may be provided to a patient in any calendar year.

(4) Under joint regulations to be prescribed by the administering Secretaires, the services of Christian Science practitioners and nurses and services obtained in Christian Science sanatoriums may be provided.

(5) Durable equipment, such as wheelchairs, iron lungs and hospital beds may be provided on a rental basis.

(6) Inpatient mental health services may not (except as provided in subsection (i)) be provided to a patient in excess of—

(A) 30 days in any year, in the case of a patient 19 years of age or older;

(B) 45 days in any year, in the case of a patient under 19 years of age; or

(C) 150 days in any year, in the case of inpatient mental health services provided as residential treatment care.

(7) Services in connection with nonemergency inpatient hospital care may not be provided if such services are available at a facility of the uniformed services located within a 40-mile radius of the residence of the patient, except that those services may be provided in any case in which another insurance plan or program provides primary coverage for those services.

(8) Services of pastoral counselors, family and child counselors, or marital counselors (other than certified marriage and family therapists) may not be provided unless the patient has been referred to the counselor by a medical doctor for treatment of a specific problem with the results of that treatment to be communicated back to the medical doctor who made the referral and services of certified marriage and family therapists may be provided consistent with such rules as may be prescribed by the Secretary of Defense, including credentialing criteria and a requirement that the therapists accept payment under this section as full payment for all services provided.

(9) Special education may not be provided, except when provided as secondary to the active psychiatric treatment on an institutional inpatient basis.

(10) Therapy or counseling for sexual dysfunctions or sexual inadequacies may not be provided.

(11) Treatment of obesity may not be provided if obesity is the sole or major condition treated.

(12) Surgery which improves physical appearance but is not expected to significantly restore functions (including mammary augmentation, face lifts, and sex gender changes) may not be provided, except that—

(A) breast reconstructive surgery following a mastectomy may be provided;

(B) reconstructive surgery to correct serious deformities caused by congenital anomalies or accidental injuries may be provided; and

(C) neoplastic surgery may be provided.

(13) Any service or supply which is not medically or psychologically necessary to prevent, diagnose, or treat a mental or physical illness, injury, or bodily malfunction as assessed or diagnosed by a physician, dentist, clinical psychologist, certified marriage and family therapist, optometrist, podiatrist, certified nurse-midwife, certified nurse practitioner, or certified clinical social worker, as appropriate, may not be provided, except as authorized in paragraph (4). Pursuant to an agreement with the Secretary of Health and Human Services and under such regulations as the Secretary of Defense may prescribe, the Secretary of Defense may waive the operation of this paragraph in connection with clinical trials sponsored or approved by the National Institutes of Health if the Secretary of Defense determines that such a waiver will promote access by covered beneficiaries to promising new treatments and contribute to the development of such treatments.

(14) The prohibition contained in section 1077(b)(3) of this title shall not apply in the case of a member or former member of the uniformed services.

(15) Electronic cardio-respiratory home monitoring equipment (apnea monitors) for home use may be provided if a physician prescribes and supervises the use of the monitor for an infant)—

(A) who has had an apparent life-threatening event,

(B) who is a subsequent sibling of a victim of sudden infant death syndrome,

(C) whose birth weight was 1,500 grams or less, or

(D) who is a pre-term infant with pathologic apnea,

in which case the coverage may include the cost of the equipment, hard copy analysis of physiological alarms, professional visits, diagnostic testing, family training on how to respond to apparent life threatening events, and assistance necessary for proper use of the equipment.

(16) Hospice care may be provided only in the manner and under the conditions provided in section 1861(dd) of the Social Security Act (42 U.S.C. 1395x(dd)).

(17)(A) The Secretary of Defense may establish a program for the individual case management of a person covered by this section or section 1086 of this title who has extraordinary medical or psychological disorders and, under such a program, may waive benefit limitations contained in paragraphs (5) and (13) of this subsection or section 1077(b)(1) of this title and author-

ize the payment for comprehensive home health care services, supplies, and equipment if the Secretary determines that such a waiver is cost-effective and appropriate.

(B) The total amount expended under subparagraph (A) for a fiscal year may not exceed $100,000,000.

(b) Plans covered by subsection (a) shall include provisions for payment by the patient of the following amounts:

(1) $25 for each admission to a hospital, or the amount the patient would have been charged under section 1078(a) of this title had the care being paid for been obtained in a hospital of the uniformed services, whichever amount is the greater. The Secretary of Defense may exempt a patient from paying such amount if the hospital to which the patient is admitted does not impose a legal obligation on any of its patients to pay for inpatient care.

(2) Except as provided in clause (3), the first $150 each fiscal year of the charges for all types of care authorized by subsection (a) and received while in an outpatient status and 20 percent of all subsequent charges for such care during a fiscal year. Notwithstanding the preceding sentence, in the case of a dependent of an enlisted member in a pay grade below E–5, the initial deductible each fiscal year under this paragraph shall be limited to $50.

(3) A family group of two or more persons covered by this section shall not be required to pay collectively more than the first $300 (or in the case of the family group of an enlisted member in a pay grade below E–5, the first $100) each fiscal year of the charges for all types of care authorized by subsection (a) and received while in an outpatient status and 20 percent of the additional charges for such care during a fiscal year.

(4) $25 for surgical care that is authorized by subsection (a) and received while in an outpatient status and that has been designated (under joint regulations to be prescribed by the administering Secretaries) as care to be treated as inpatient care for purposes of this subsection. Any care for which payment is made under this clause shall not be considered to be care received while in an outpatient status for purposes of clauses (2) and (3).

(5) An individual or family group of two or more persons covered by this section may not be required by reason of this subsection to pay a total of more than $1,000 for health care received during any fiscal year under a plan under subsection (a).

(c) The methods for making payment under subsection (b) shall be prescribed under joint regulations issued by the administering Secretaries.

(d) Under joint regulations to be prescribed by the administering Secretaries, in the case of a dependent, as described in subparagraph (A), (D), or (I) of section 1072(2) of this title, of a member of the uniformed services on active duty for a period of more than 30 days, who is moderately or severely mentally retarded or who has a serious physical handicap, the plans covered

by subsection (a) shall, with respect to the retardation or handicap of such dependent, include the following:

(1) Diagnosis.

(2) Inpatient, outpatient, and home treatment.

(3) Training, rehabilitation, and special education.

(4) Institutional care in private nonprofit, public and State institutions and facilities and, when appropriate, transportation to and from such institutions and facilities.[4]

(e) Members shall be required to share in the cost of any benefits provided their dependents under subsection (d) as follows:

(1) Except as provided in clause (3), members in the lowest enlisted pay grade shall be required to pay the first $25 incurred each month and members in the highest commissioned pay grade shall similarly be required to pay $250 per month. The amounts to be similarly paid by members in all other pay grades shall be determined under joint regulations to be prescribed by the administering Secretaries.

(2) Except as provided in clause (4), the Government's share of the cost of any benefits provided in a particular case under subsection (d) shall not exceed $1,000 per month.

(3) Members shall also be required to pay each month that amount, if any, remaining after the Government's maximum share has been reached.

(4) A member who has more than one dependent incurring expenses in a given month under a plan covered by subsection (d) shall not be required to pay an amount greater than he would be required to pay if he had but one such dependent.

(f) To qualify for the benefits provided by subsection (d), members shall be required to use public facilities to the extent they are available and adequate as determined under joint regulations of the administering Secretaries.

(g) When a member dies while he is eligible for receipt of hostile fire pay under section 310 of title 37 or from a disease or injury incurred while eligible for such pay, his dependents who are receiving benefits under a plan covered by subsection (d) shall continue to be eligible for such benefits until they pass their twenty-first birthday. In addition, when a member dies while on active duty for a period of more than 30 days, the member's dependents who are receiving benefits under a plan covered by subsection (a) shall continue to be eligible for such benefits during the three-year period beginning on the date of the death of the member.

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[4] Section 8017 of the Department of Defense Appropriations Act, 2001 (P.L. 106–259; 114 Stat. 678), provides:

SEC. 8017. None of the funds appropriated by this Act available for the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) or TRICARE shall be available for the reimbursement of any health care provider for inpatient mental health service for care received when a patient is referred to a provider of inpatient mental health care or residential treatment care by a medical or health care professional having an economic interest in the facility to which the patient is referred: *Provided*, That this limitation does not apply in the case of inpatient mental health services provided under the program for persons with disabilities under subsection (d) of section 1079 of title 10, United States Code, provided as partial hospital care, or provided pursuant to a waiver authorized by the Secretary of Defense because of medical or psychological circumstances of the patient that are confirmed by a health professional who is not a Federal employee after a review, pursuant to rules prescribed by the Secretary, which takes into account the appropriate level of care for the patient, the intensity of services required by the patient, and the availability of that care.

(h)(1) Except as provided in paragraphs (2) and (3), payment for a charge for services by an individual health care professional (or other noninstitutional health care provider) for which a claim is submitted under a plan contracted for under subsection (a) shall be equal to an amount determined to be appropriate, to the extent practicable, in accordance with the same reimbursement rules as apply to payments for similar services under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.). The Secretary of Defense shall determine the appropriate payment amount under this paragraph in consultation with the other administering Secretaries.

(2) The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations to provide for such exceptions to the payment limitations under paragraph (1) as the Secretary determines to be necessary to assure that covered beneficiaries retain adequate access to health care services. Such exceptions may include the payment of amounts higher than the amount allowed under paragraph (1) when enrollees in managed care programs obtain covered services from nonparticipating providers. To provide a suitable transition from the payment methodologies in effect before the date of the enactment of this paragraph to the methodology required by paragraph (1), the amount allowable for any service may not be reduced by more than 15 percent below the amount allowed for the same service during the immediately preceding 12-month period (or other period as established by the Secretary of Defense).

(3) In addition to the authority provided under paragraph (2), the Secretary of Defense may authorize the commander of a facility of the uniformed services, the lead agent (if other than the commander), and the health care contractor to modify the payment limitations under paragraph (1) for certain health care providers when necessary to ensure both the availability of certain services for covered beneficiaries and lower costs than would otherwise be incurred to provide the services. With the consent of the health care provider, the Secretary is also authorized to reduce the authorized payment for certain health care services below the amount otherwise required by the payment limitations under paragraph (1).

(4) The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations to establish limitations (similar to the limitations established under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.)) on beneficiary liability for charges of an individual health care professional (or other noninstitutional health care provider).

(5) To assure access to care for all covered beneficiaries, the Secretary of Defense, in consultation with the other administering Secretaries, shall designate specific rates for reimbursement for services in certain localities if the Secretary determines that without payment of such rates access to health care services would be severely impaired. Such a determination shall be based on consideration of the number of providers in a locality who provide the services, the number of such providers who are CHAMPUS participating providers, the number of covered beneficiaries under CHAMPUS in the locality, the availability of military providers in

the location or a nearby location, and any other factors determined to be relevant by the Secretary.

(i)(1) The limitation in subsection (a)(6) does not apply in the case of inpatient mental health services—

(A) provided under the program for the handicapped under subsection (d);

(B) provided as partial hospital care; or

(C) provided pursuant to a waiver authorized by the Secretary of Defense because of medical or psychological circumstances of the patient that are confirmed by a health professional who is not a Federal employee after a review, pursuant to rules prescribed by the Secretary, which takes into account the appropriate level of care for the patient, the intensity of services required by the patient, and the availability of that care.

(2) Notwithstanding subsection (b) or section 1086(b) of this title, the Secretary of Defense (after consulting with the other administering Secretaries) may prescribe separate payment requirements (including deductibles, copayments, and catastrophic limits) for the provision of mental health services to persons covered by this section or section 1086 of this title. The payment requirements may vary for different categories of covered beneficiaries, by type of mental health service provided, and based on the location of the covered beneficiaries.

(3) Except in the case of an emergency, the Secretary of Defense shall require preadmission authorization before inpatient mental health services may be provided to persons covered by this section or section 1086 of this title. In the case of the provision of emergency inpatient mental health services, approval for the continuation of such services shall be required within 72 hours after admission.

(j)(1) A benefit may not be paid under a plan covered by this section in the case of a person enrolled in, or covered by, any other insurance, medical service, or health plan, including any plan offered by a third-party payer (as defined in section 1095(h)(1) of this title), to the extent that the benefit is also a benefit under the other plan, except in the case of a plan administered under title XIX of the Social Security Act (42U.S.C. 1396 et seq.).

(2)(A) The amount to be paid to a provider of services for services provided under a plan covered by this section may be determined under joint regulations to be prescribed by the administering Secretaries which provide that the amount of such payments shall be determined to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(B) In subparagraph (A), the term "provider of services" means a hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program (as defined in section 1861(dd)(2) of the Social Security Act (42 U.S.C. 1395x(dd)(2)), or other institutional facility providing services for which payment may be made under a plan covered by this section.

(k) A plan covered by this section may include provision of liver transplants (including the cost of acquisition and transpor-

tation of the donated liver) in accordance with this subsection. Such a liver transplant may be provided if—

(1) the transplant is for a dependent considered appropriate for that procedure by the Secretary of Defense in consultation with the administering Secretaries and such other entities as the Secretary considers appropriate; and

(2) the transplant is to be carried out at a health-care facility that has been approved for that purpose by the Secretary of Defense after consultation with the Secretary of Health and Human Services and such other entities as the Secretary considers appropriate.

(l)(1) Contracts entered into under subsection (a) shall also provide for medical care for dependents of former members of the uniformed services who are authorized to receive medical and dental care under section 1076(e) of this title in facilities of the uniformed services.

(2) Except as provided in paragraph (3), medical care in the case of a dependent described in section 1076(e) shall be furnished under the same conditions and subject to the same limitations as medical care furnished under this section to spouses and children of members of the uniformed services described in the first sentence of subsection (a).

(3) Medical care may be furnished to a dependent pursuant to paragraph (1) only for an injury, illness, or other condition described in section 1076(e) of this title.

(m)(1) Subject to paragraph (2), the Secretary of Defense may, upon request, make payments under this section for a charge for services for which a claim is submitted under a plan contracted for under subsection (a) to a hospital that does not impose a legal obligation on any of its patients to pay for such services.

(2) A payment under paragraph (1) may not exceed the average amount paid for comparable services in the geographic area in which the hospital is located or, if no comparable services are available in that area, in an area similar to the area in which the hospital is located.

(3) The Secretary of Defense shall periodically review the billing practices of each hospital the Secretary approves for payment under this subsection to ensure that the hospital's practices of not billing patients for payment are not resulting in increased costs to the Government.

(4) The Secretary of Defense may require each hospital the Secretary approves for payment under this subsection to provide evidence that it has sources of revenue to cover unbilled costs.

(n) The Secretary of Defense may enter into contracts (or amend existing contracts) with fiscal intermediaries under which the intermediaries agree to organize and operate, directly or through subcontractors, managed health care networks for the provision of health care under this chapter. The managed health care networks shall include cost containment methods, such as utilization review and contracting for care on a discounted basis.

(o)(1) Health care services provided pursuant to this section or section 1086 of this title (or pursuant to any other contract or project under the Civilian Health and Medical Program of the Uniformed Services) may not include services determined under the

CHAMPUS Peer Review Organization program to be not medically or psychologically necessary.

(2) The Secretary of Defense, after consulting with the other administering Secretaries, may adopt or adapt for use under the CHAMPUS Peer Review Organization program, as the Secretary considers appropriate, any of the quality and utilization review requirements and procedures that are used by the Peer Review Organization program under part B of title XI of the Social Security Act (42 U.S.C. 1320c et seq.).

(p)[5](1) Subject to such exceptions as the Secretary of Defense considers necessary, coverage for medical care under this section for the dependents referred to in subsection (a) of a member of the uniformed services referred to in section 1074(c)(3) of this title who are residing with the member, and standards with respect to timely access to such care, shall be comparable to coverage for medical care and standards for timely access to such care under the managed care option of the TRICARE program known as TRICARE Prime.

(2) The Secretary of Defense shall enter into arrangements with contractors under the TRICARE program or with other appropriate contractors for the timely and efficient processing of claims under this subsection.

(3) The Secretary of Defense shall consult with the other administering Secretaries in the administration of this subsection.

(Added P.L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1448; amended P.L. 89–614, § 2(6), Sept. 30, 1966, 80 Stat. 863; P.L. 92–58, § 1, July 29, 1971, 85 Stat. 157; P.L. 95–485, § 806(a)(1), Oct. 20, 1978, 92 Stat. 1622; P.L. 96–342, § 810(a), (b), Sept. 8, 1980, 94 Stat. 1097; P.L. 96–513, §§ 501(13), 511(36), (38), Dec. 12, 1980, 94 Stat. 2908, 2923; P.L. 96–552, Dec. 19, 1980, 94 Stat. 3254; P.L. 97–22, § 11(a)(2), July 10, 1981, 95 Stat. 137; P.L. 97–86, § 906(a)(1), Dec. 1, 1981, 95 Stat. 1117; P.L. 98–94, § 931(a), § 1268(4), Sept. 24, 1983, 97 Stat. 648, 705; P.L. 98–525, § 632(a)(1), §§ 1401(e)(4), 1405(23), Oct. 19, 1984, 98 Stat. 2543, 2617, 2623; P.L. 98–557, § 19(7), Oct. 30, 1984, 98 Stat. 2869; P.L. 99–661, §§ 652(d), 703, Nov. 14, 1986, 100 Stat. 3889, 3900; P.L. 100–180, §§ 721(a), 726, Dec. 4, 1987, 101 Stat. 1115, 1117; P.L. 100–456, § 646(a), Sept. 29, 1988, 102 Stat. 1989; P.L. 101–189, § 730(a), Nov. 29, 1989, 103 Stat. 1481; P.L. 101–510, §§ 701(a), 702(a), 703, 712(a), 1484(g)(1), Nov. 5, 1990, 104 Stat. 1580, 1581, 1583, 1717; P.L. 102–190, §§ 702(b), 711, 712(a), 713, Dec. 5, 1991, 105 Stat. 1400, 1402, 1402, 1403; P.L. 102–484, §§ 704, 1052(13), Oct. 23, 1992, 106 Stat. 2432, 2499; P.L. 103–35, § 202(a)(5), May 31, 1993, 107 Stat. 101; P.L. 103–160, §§ 711, 716(c), Nov. 30, 1993, 107 Stat. 1688, 1693; P.L. 103–337, §§ 702(a), 707(a), Oct. 5, 1994, 108 Stat. 2797, 2800; P.L. 104–106, §§ 701, 731(a)–(d), Feb. 10, 1996, 110 Stat. 370, 380; P.L. 104–201, §§ 701(b)(2), 711, 731, 732, 735(c), Sept. 23, 1996, 110 Stat. 2587, 2590, 2597, 2599; P.L. 105–85, § 735, Nov. 18, 1997, 111 Stat. 1813; P.L. 106–398, § 1[701(c)(1), 704(b), 722(b)(1), 757(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–172, 1654A–175, 1654A–185, 1654A–198.)

§ 1079a. CHAMPUS: treatment of refunds and other amounts collected

All refunds and other amounts collected in the administration of the Civilian Health and Medical Program of the Uniformed Services shall be credited to the appropriation available for that program for the fiscal year in which the refund or amount is collected.

(Added P.L. 104–201, § 733, Sept. 23, 1996, 110 Stat. 2597.)

§ 1080. Contracts for medical care for spouses and children: election of facilities

(a) ELECTION.—A dependent covered by section 1079 of this title may elect to receive inpatient medical care either in (1) the

[5] Subsection (p) takes effect on October 1, 2001, as provided in section 722(c)(1) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654A–185).

facilities of the uniformed services, under the conditions prescribed by sections 1076–1078 of this title, or (2) the facilities provided under a plan contracted for under section 1079 of this title. However, under such regulations as the Secretary of Defense, after consulting the other administering Secretaries, may prescribe, the right to make this election may be limited for dependents residing in the area where the member concerned is assigned, if adequate medical facilities of the uniformed services are available in that area for those dependents.

(b) ISSUANCE OF NONAVAILABILITY-OF-HEALTH-CARE-STATEMENTS.—In determining whether to issue a nonavailability-of-health-care-statement for a dependent described in subsection (a), the commanding officer of a facility of the uniformed services may consider the availability of health care services for the dependent pursuant to any contract or agreement entered into under this chapter for the provision of health care services. Notwithstanding any other provision of law, with respect to obstetrics and gynecological care for beneficiaries not enrolled in a managed care plan offered pursuant to any contract or agreement under this chapter, a nonavailability-of-health-care statement shall be required for receipt of health care services related to outpatient prenatal, outpatient or inpatient delivery, and outpatient post-partum care subsequent to the visit which confirms the pregnancy.

(c) WAIVERS AND EXCEPTIONS TO REQUIREMENTS.—(1) A covered beneficiary enrolled in a managed care plan offered pursuant to any contract or agreement under this chapter for the provision of health care services shall not be required to obtain a nonavailability-of-health-care statement as a condition for the receipt of health care.

(2) The Secretary of Defense may waive the requirement to obtain nonavailability-of-health-care statements following an evaluation of the effectiveness of such statements in optimizing the use of facilities of the uniformed services.

(Added P.L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1449; amended P.L. 96–513, § 511(36), Dec. 12, 1980, 94 Stat. 2923; P.L. 98–557, § 19(8), Oct. 30, 1984, 98 Stat. 2870; P.L. 103–160, § 716(b)(1), Nov. 30, 1993, 107 Stat. 1892; P.L. 104–201, § 734, Sept. 23, 1996, 110 Stat. 2598; P.L. 106–65, § 712(c), Oct. 5, 1999, 113 Stat. 687.)

§ 1081. Contracts for medical care for spouses and children: review and adjustment of payments

Each plan under section 1079 of this title shall provide for a review, and if necessary an adjustment of payments, by the appropriate administering Secretary, not later than 120 days after the close of each year the plan is in effect.

(Added P.L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1449; amended P.L. 96–513, § 511(36), Dec. 12, 1980, 94 Stat. 2923; P.L. 97–375, § 104(a), Dec. 21, 1982, 96 Stat. 1819; P.L. 98–94, § 1268(5)(A), Sept. 24, 1983, 97 Stat. 706; P.L. 98–557, § 19(9), Oct. 30, 1984, 98 Stat. 2870.)

§ 1082. Contracts for health care: advisory committees

To carry out sections 1079–1081 and 1086 of this title, the Secretary of Defense may establish advisory committees on insurance, medical service, and health plans, to advise and make recommendations to him. He shall prescribe regulations defining their scope, activities, and procedures. Each committee shall consist of the Secretary, or his designee, as chairman, and such other persons

as the Secretary may select. So far as possible, the members shall be representative of the organizations in the field of insurance, medical service, and health plans. They shall serve without compensation but may be allowed transportation and a per diem payment in place of subsistence and other expenses.

(Added P.L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1449; amended P.L. 89–614, § 2(8), Sept. 30, 1966, 80 Stat. 866.)

§ 1083. Contracts for medical care for spouses and children: additional hospitalization

If a dependent covered by a plan under section 1079 of this title needs hospitalization beyond the time limits in that plan, and if the hospitalization is authorized in medical facilities of the uniformed services, he may be transferred to such a facility for additional hospitalization. If transfer is not feasible, the expenses of additional hospitalization in the civilian facility may be paid under such regulations as the Secretary of Defense may prescribe after consulting the other administering Secretaries.

(Added P.L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1449; amended P.L. 96–513, § 511(36), Dec. 12, 1980, 94 Stat. 2923; P.L. 98–557, § 19(10), Oct. 30, 1984, 98 Stat. 2870.)

§ 1084. Determinations of dependency

A determination of dependency by an administering Secretary under this chapter is conclusive. However, the administering Secretary may change a determination because of new evidence or for other good cause. The Secretary's determination may not be reviewed in any court or by the General Accounting Office, unless there has been fraud or gross negligence.

(Added P.L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1450; amended P.L. 89–614, § 2(1), Sept. 30, 1966, 80 Stat. 862; P.L. 96–513, § 511(34)(A), (36), Dec. 12, 1980, 94 Stat. 2922, 2923; P.L. 98–557 § 19(11), Oct. 30, 1984, 98 Stat. 2870.)

§ 1085. Medical and dental care from another executive department: reimbursement

If a member or former member of a uniformed service under the jurisdiction of one executive department (or a dependent of such a member or former member) receives inpatient medical or dental care in a facility under the jurisdiction of another executive department, the appropriation for maintaining and operating the facility furnishing the care shall be reimbursed at rates established by the President to reflect the average cost of providing the care.

(Added P.L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1450; amended P.L. 89–264, § 1, Oct. 19, 1965, 79 Stat. 989; P.L. 96–513, § 511(36), (37), Dec. 12, 1980, 94 Stat. 2923; P.L. 98–94, § 1268(6), Sept. 24, 1983, 97 Stat. 706; P.L. 98–557, § 19(12), Oct. 30, 1984, 98 Stat. 2870; P.L. 99–145, § 1303(a)(8), Nov. 8, 1985, 99 Stat. 739.)

§ 1086. Contracts for health benefits for certain members, former members, and their dependents

(a) To assure that health benefits are available for the persons covered by subsection (c), the Secretary of Defense, after consulting with the other administering Secretaries, shall contract under the authority of this section for health benefits for those persons under the same insurance, medical service, or health plans he contracts for under section 1079(a) of this title. However, eye examinations may not be provided under such plans for persons covered by subsection (c).

(b) For persons covered by this section the plans contracted for under section 1079(a) of this title shall contain the following provisions for payment by the patient:

(1) Except as provided in clause (2), the first $150 each fiscal year of the charges for all types of care authorized by this section and received while in an outpatient status and 25 percent of all subsequent charges for such care during a fiscal year.

(2) A family group of two or more persons covered by this section shall not be required to pay collectively more than the first $300 each fiscal year of the charges for all types of care authorized by this section and received while in an outpatient status and 25 percent of the additional charges for such care during a fiscal year.

(3) 25 percent of the charges for inpatient care. The Secretary of Defense may exempt a patient from paying such charges if the hospital to which the patient is admitted does not impose a legal obligation on any of its patients to pay for inpatient care.

(4) A member or former member of a uniformed service covered by this section by reason of section 1074(b) of this title, or an individual or family group of two or more persons covered by this section, may not be required to pay a total of more than $3,000 for health care received during any fiscal year under a plan contracted for under section 1079(a) of this title.

(c) Except as provided in subsection (d), the following persons are eligible for health benefits under this section:

(1) Those covered by sections 1074(b) and 1076(b) of this title, except those covered by section 1072(2)(E) of this title.

(2) A dependent (other than a dependent covered by section 1072(2)(E) of this title) of a member of a uniformed service—

(A) who died while on active duty for a period of more than 30 days; or

(B) who died from an injury, illness, or disease incurred or aggravated—

(i) while on active duty under a call or order to active duty of 30 days or less, on active duty for training, or on inactive duty training; or

(ii) while traveling to or from the place at which the member is to perform, or has performed, such active duty, active duty for training, or inactive duty training.

(3) A dependent covered by clause (F), (G), or (H) of section 1072(2) of this title who is not eligible under paragraph (1).

(d)(1) A person who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.) is not eligible for health benefits under this section.

(2)[6] The prohibition contained in paragraph (1) shall not apply in the case of a person referred to in subsection (c) who—

[6] Effective October 1, 2001, pursuant to paragraph (1) of section 712(a) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654A–176), paragraph (2) of subsection (d) shall read as follows:

Continued

(A) is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act pursuant to subparagraph (A) or (C) of section 226(b)(2) of such Act (42 U.S.C. 426(b)(2)) or section 226A(a) of such Act (42 U.S.C. 426–1(a));

(B) is under 65 years of age; and

(C) is enrolled in the supplementary medical insurance program under part B of such title (42 U.S.C. 1395j et seq.).

(3)(A) Subject to subparagraph (B), if a person described in paragraph (2) receives medical or dental care for which payment may be made under medicare and a plan contracted for under subsection (a), the amount payable for that care under the plan shall be the amount of the actual out-of-pocket costs incurred by the person for that care over the sum of—

(i) the amount paid for that care under medicare; and

(ii) the total of all amounts paid or payable by third party payers other than medicare.

(B) The amount payable for care under a plan pursuant to subparagraph (A) may not exceed the total amount that would be paid under the plan if payment for that care were made solely under the plan.

(C) In this paragraph:

(i) The term "medicare" means title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(ii) The term "third party payer" has the meaning given such term in section 1095(h)(1) of this title.

(4)[7] The administering Secretaries shall develop a mechanism by which persons described in paragraph (1) who satisfy only the criteria specified in subparagraphs (A) and (B) of paragraph (2), but not subparagraph (C) of such paragraph, are promptly notified of their ineligibility for health benefits under this section. In developing the notification mechanism, the administering Secretaries shall consult with the administrator of the Health Care Financing Administration.

(e) A person covered by this section may elect to receive inpatient medical care either in (1) Government facilities, under the conditions prescribed in sections 1074 and 1076–1078 of this title, or (2) the facilities provided under a plan contracted for under this section. However, under joint regulations issued by the administering Secretaries, the right to make this election may be limited for those persons residing in an area where adequate facilities of the uniformed service are available. In addition, subsections (b)

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(2) The prohibition contained in paragraph (1) shall not apply to a person referred to in subsection (c) who—

(A) is enrolled in the supplementary medical insurance program under part B of such title (42 U.S.C. 1395j et seq.); and

(B) in the case of a person under 65 years of age, is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act pursuant to subparagraph (A) or (C) of section 226(b)(2) of such Act (42 U.S.C. 426(b)(2)) or section 226A(a) of such Act (42 U.S.C. 426–1(a)).

[7] Effective October 1, 2001, pursuant to paragraph (1) of section 712(a) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654A–176), paragraph (4) of subsection (d) shall read as follows:

(4) The administering Secretaries shall develop a mechanism by which persons described in subparagraph (B) of paragraph (2) who do not satisfy the condition specified in subparagraph (A) of such paragraph are promptly notified of their ineligibility for health benefits under this section. In developing the notification mechanism, the administering Secretaries shall consult with the administrator of the Health Care Financing Administration.

and (c) of section 1080 of this title shall apply in making the determination whether to issue a nonavailability of health care statement for a person covered by this section.

(f) The provisions of section 1079(h) of this title shall apply to payments for services by an individual health-care professional (or other noninstitutional health-care provider) under a plan contracted for under subsection (a).

(g) Section 1079(j) of this title shall apply to a plan contracted for under this section, except that no person eligible for health benefits under this section may be denied benefits under this section with respect to care or treatment for any service-connected disability which is compensable under chapter 11 of title 38 solely on the basis that such person is entitled to care or treatment for such disability in facilities of the Department of Veterans Affairs.

(h)(1) Subject to paragraph (2), the Secretary of Defense may, upon request, make payments under this section for a charge for services for which a claim is submitted under a plan contracted for under subsection (a) to a hospital that does not impose a legal obligation on any of its patients to pay for such services.

(2) A payment under paragraph (1) may not exceed the average amount paid for comparable services in the geographic area in which the hospital is located or, if no comparable services are available in that area, in an area similar to the area in which the hospital is located.

(3) The Secretary of Defense shall periodically review the billing practices of each hospital the Secretary approves for payment under this subsection to ensure that the hospital's practices of not billing patients for payment are not resulting in increased costs to the Government.

(4) The Secretary of Defense may require each hospital the Secretary approves for payment under this subsection to provide evidence that it has sources of revenue to cover unbilled costs.

(Added P.L. 89–614, § 2(7), Sept. 30, 1966, 80 Stat. 865; amended P.L. 95–485, § 806(a)(2), Oct. 20, 1978, 92 Stat. 1622; P.L. 96–173, § 1, Dec. 29, 1979, 93 Stat. 1287; P.L. 96–513, §§ 501(14), 511(36), (39), Dec. 12, 1980, 94 Stat. 2908, 2923; P.L. 97–86, § 906(a)(2), Dec. 1, 1981, 95 Stat. 1117; P.L. 97–252, § 1004(c), Sept. 8, 1982, 96 Stat. 737; P.L. 98–94, § 931(b), Sept. 24, 1983, 97 Stat. 649; P.L. 98–525, § 632(a)(2), Oct. 19, 1984, 98 Stat. 2543; P.L. 98–557, § 19(13), Oct. 30, 1984, 98 Stat. 2870; P.L. 99–145, § 652(b), Nov. 8, 1985, 99 Stat. 656; P.L. 99–661, § 604(f)(1)(C), Nov. 14, 1986, 100 Stat. 3877; P.L. 100–180, § 721(b), Dec. 4, 1987, 101 Stat. 1115; P.L. 100–456, § 646(b), Sept. 29, 1988, 102 Stat. 1989; P.L. 101–189, §§ 731(c)(2), 1621(a)(3), Nov. 29, 1989, 103 Stat. 1482, 1603; P.L. 101–510, § 712(b), Nov. 5, 1990, 104 Stat. 1583; P.L. 102–190, § 704(a), (b)(1), Dec. 5, 1991, 105 Stat. 1401; P.L. 102–484, §§ 703(a), 705(a), Oct. 23, 1992, 106 Stat. 2432; P.L. 103–35, § 203(b)(2), May 31, 1993, 107 Stat. 102; P.L. 103–160, § 716(b)(2), Nov. 30, 1993, 107 Stat. 1693; P.L. 103–337, § 711, Oct. 5, 1994, 108 Stat. 2801; P.L. 104–106, § 732, Feb. 10, 1996, 110 Stat. 381; P.L. 104–201, § 734(a)(2), (b)(2), Sept. 23, 1996, 110 Stat. 2598; P.L. 106–398, § 1[712(a)(1), 759], Oct. 30, 2000, 114 Stat. 1654, 1654A–176, 1654A–200.)

§ 1086a. Certain former spouses: extension of period of eligibility for health benefits

(a) AVAILABILITY OF CONVERSION HEALTH POLICIES.—The Secretary of Defense shall inform each person who has been a dependent for a period of one year or more under section 1072(2)(H) of this title of the availability of a conversion health policy for purchase

by the person. A conversion health policy offered under this subsection shall provide coverage for not less than a 24-month period.[8]

(b) EFFECT OF PURCHASE.—(1) Subject to paragraph (2), if a person who is a dependent for a one-year period under section 1072(2)(H) of this title purchases a conversion health policy within that period (or within a reasonable time after that period as prescribed by the Secretary of Defense), the person shall continue to be eligible for medical and dental care in the manner described in section 1076 of this title and health benefits under section 1086 of this title until the end of the 24-month period beginning on the later of—

(A) the date the person is no longer a dependent under section 1072(2)(H) of this title; and

(B) the date of the purchase of the policy.

(2) The extended period of eligibility provided under paragraph (1) shall apply only with regard to a condition of the person that—

(A) exists on the date on which coverage under the conversion health policy begins; and

(B) for which care is not provided under the policy solely on the grounds that the condition is a preexisting condition.

(c) EFFECT OF UNAVAILABILITY OF POLICIES.—(1) If the Secretary of Defense is unable, within a reasonable time, to enter into a contract with a private insurer to offer conversion health policies under subsection (a) at a rate not to exceed the payment required under section 8905a(d)(1)(A) of title 5 for comparable coverage, the Secretary shall provide the coverage required under such a policy through the Civilian Health and Medical Program of the Uniformed Services. Subject to paragraph (2), a person receiving coverage under this subsection shall be required to pay into the Military Health Care Account or other appropriate account an amount equal to the sum of—

(A) the individual and Government contributions which would be required in the case of a person enrolled in a health benefits plan contracted for under section 1079 of this title; and

(B) an amount necessary for administrative expenses, but not to exceed two percent of the amount under subparagraph (A).

(2) The amount paid by a person who purchases a conversion health policy from the Secretary of Defense under paragraph (1) may not exceed the payment required under section 8905a(d)(1)(A) of title 5 for comparable coverage.

(3) In order to reduce premiums required under paragraph (1), the Secretary of Defense may offer a program of coverage that, with respect to mental health services, offers reduced coverage and increased cost-sharing by the purchaser.

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[8] Section 4408(c) of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 102–484, 106 Stat. 2712) provides:

(c) TERMINATION OF APPLICABILITY OF OTHER CONVERSION HEALTH POLICIES.—(1) No person may purchase a conversion health policy under section 1145(b) or 1086a of title 10, United States Code, on or after October 1, 1994. A person covered by such a conversion health policy on that date may cancel that policy and enroll in a health benefits plan under section 1078a of such title.

(2) No person may be covered concurrently by a conversion health policy under section 1145(b) or 1086a of such title and a health benefits plan under section 1078a of such title.

(d) CONVERSION HEALTH POLICY DEFINED.—In this section, the term "conversion health policy" means a health insurance policy with a private insurer, developed through negotiations between the Secretary of Defense and the private insurer, that is available for one-year period under section 1072(2)(H) of this title.

(Added P.L. 101–189, § 731(b)(1), Nov. 29, 1989, 103 Stat. 1482; amended P.L. 102–484, § 4407(b), Oct. 23, 1992, 106 Stat. 2707; P.L. 103–35, § 202(a)(16), May 31, 1994, 107 Stat. 102.)

§ 1087. Programing facilities for certain members, former members, and their dependents in construction projects of the uniformed services

(a) Space for inpatient and outpatient care may be programed in facilities of the uniformed services for persons covered by sections 1074(b) and 1076(b) of this title. The maximum amount of space that may be so programed for a facility is the greater of—

(1) the amount of space that would be so programed for the facility in order to meet the requirements to be placed on the facility for support of the teaching and training of health-care professionals; and

(2) the amount of space that would be so programed for the facility based upon the most cost-effective provision of inpatient and outpatient care to persons covered by sections 1074(b) and 1076(b) of this title.

(b)(1) In making determinations for the purposes of clauses (1) and (2) of subsection (a), the Secretary concerned shall take into consideration—

(A) the amount of space that would be so programed for the facility based upon projected inpatient and outpatient workloads at the facility for persons covered by sections 1074(b) and 1076(b) of this title; and

(B) the anticipated capability of the medical and dental staff of the facility, determined in accordance with regulations prescribed by the Secretary of Defense and based upon realistic projections of the number of physicians and other health-care providers that it can reasonably be expected will be assigned to or will otherwise be available to the facility.

(2) In addition, a determination made for the purpose of clause (2) of subsection (a) shall be made in accordance with an economic analysis (including a life-cycle cost analysis) of the facility and consideration of all reasonable and available medical care treatment alternatives (including treatment provided under a contract under section 1086 of this title or under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.)).

(Added P.L. 89–614, § 2(7), Sept. 30, 1966, 80 Stat. 866; amended P.L. 97–337, § 1, Oct. 15, 1982, 96 Stat. 1631; P.L. 98–525, § 1405(24), Oct. 19, 1984, 98 Stat. 2623; P.L. 99–661, § 1343(a)(4), Nov. 14, 1986, 100 Stat. 3992.)

§ 1088. Air evacuation patients: furnished subsistence

Notwithstanding any other provision of law, and under regulations to be prescribed by the Secretary concerned, a person entitled to medical and dental care under this chapter may be furnished subsistence without charge while being evacuated as a patient by military aircraft of the United States.

(Added P.L. 91–481, § 2(1), Oct. 21, 1970, 84 Stat. 1081.)

§ 1089. Defense of certain suits arising out of medical malpractice

(a) The remedy against the United States provided by sections 1346(b) and 2672 of title 28 for damages for personal injury, including death, caused by the negligent or wrongful act or omission of any physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (including medical and dental technicians, nursing assistants, and therapists) of the armed forces, the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32, the Department of Defense, the Armed Forces Retirement Home, or the Central Intelligence Agency in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of his duties or employment therein or therefor shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or the estate of such person) whose act or omission gave rise to such action or proceeding. This subsection shall also apply if the physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or the estate of such person) involved is serving under a personal services contract entered into under section 1091 of this title.

(b) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or the estate of such person) for any such injury. Any such person against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person or an attested true copy thereof to such person's immediate superior or to whomever was designated by the head of the agency concerned to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the action or proceeding is brought, to the Attorney General and to the head of the agency concerned.

(c) Upon a certification by the Attorney General that any person described in subsection (a) was acting in the scope of such person's duties or employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the District Court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State court.

(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect.

(e) For purposes of this section, the provisions of section 2680(h) of title 28 shall not apply to any cause of action arising out of a negligent or wrongful act or omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations).

(f)(1) The head of the agency concerned may, to the extent that the head of the agency concerned considers appropriate, hold harmless or provide liability insurance for any person described in subsection (a) for damages for personal injury, including death, caused by such person's negligent or wrongful act or omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of such person's duties if such person is assigned to a foreign country or detailed for service with other than a Federal department, agency, or instrumentality or if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 1346(b) of title 28, for such damage or injury.

(2) With respect to the Secretary of Defense and the Armed Forces Retirement Home Board, the authority provided by paragraph (1) also includes the authority to provide for reasonable attorney's fees for persons described in subsection (a), as determined necessary pursuant to regulations prescribed by the head of the agency concerned.

(g) In this section, the term "head of the agency concerned" means—

(1) the Director of Central Intelligence, in the case of an employee of the Central Intelligence Agency;

(2) the Secretary of Transportation, in the case of a member or employee of the Coast Guard when it is not operating as a service in the Navy;

(3) the Armed Forces Retirement Home Board, in the case of an employee of the Armed Forces Retirement Home; and

(4) the Secretary of Defense, in all other cases.

(Added P.L. 94–464, § 1(a), Oct. 8, 1976, 90 Stat. 1985; amended P.L. 97–124, § 2, Dec. 29, 1981, 95 Stat. 1666; P.L. 98–94, § 934(a), (b), (c), Sept. 24, 1983, 97 Stat. 651, 652; P.L. 100–180, § 1231(18)(A), Dec. 4, 1987, 101 Stat. 1161; P.L. 101–510, § 1533(a)(1)(A), (B), Nov. 5, 1990, 104 Stat. 1733; P.L. 105–85, § 736(b), Nov. 18, 1997, 111 Stat. 1814.)

§ 1090. Identifying and treating drug and alcohol dependence

The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations, implement procedures using each practical and available method, and provide necessary facilities to identify, treat, and rehabilitate members of the armed forces who are dependent on drugs or alcohol.

(Added P.L. 97–295, § 1(15)(A), Oct. 12, 1982, 96 Stat. 1290; amended P.L. 98–94, § 1268(7), Sept. 24, 1983, 97 Stat. 706; P.L. 101–510, § 553, Nov. 5, 1990, 104 Stat. 1567.)

§ 1091. Personal services contracts

(a) AUTHORITY.—(1) The Secretary of Defense, with respect to medical treatment facilities of the Department of Defense, and the Secretary of Transportation, with respect to medical treatment facilities of the Coast Guard when the Coast Guard is not operating

as a service in the Navy, may enter into personal services contracts to carry out health care responsibilities in such facilities, as determined to be necessary by the Secretary. The authority provided in this subsection is in addition to any other contract authorities of the Secretary, including authorities relating to the management of such facilities and the administration of this chapter.

(2) The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, may also enter into personal services contracts to carry out other health care responsibilities of the Secretary (such as the provision of medical screening examinations at Military Entrance Processing Stations) at locations outside medical treatment facilities, as determined necessary pursuant to regulations prescribed by the Secretary. The Secretary may not enter into a contract under this paragraph after December 31, 2002.

(b) LIMITATION ON AMOUNT OF COMPENSATION.—In no case may the total amount of compensation paid to an individual in any year under a personal services contract entered into under subsection (a) exceed the amount of annual compensation (excluding the allowances for expenses) specified in section 102 of title 3.

(c) PROCEDURES.—(1) The Secretary shall establish by regulation procedures for entering into personal services contracts with individuals under subsection (a). At a minimum, such procedures shall assure—

(A) the provision of adequate notice of contract opportunities to individuals residing in the area of the medical treatment facility involved; and

(B) consideration of interested individuals solely on the basis of the qualifications established for the contract and the proposed contract price.

(2) Upon the establishment of the procedures under paragraph (1), the Secretary may exempt contracts covered by this section from the competitive contracting requirements specified in section 2304 of this title or any other similar requirements of law.

(d) EXCEPTIONS.—The procedures and exemptions provided under subsection (c) shall not apply to personal services contracts entered into under subsection (a) with entities other than individuals or to any contract that is not an authorized personal services contract under subsection (a).

(Added P.L. 98–94, § 932(a)(1), Sept. 24, 1983, 97 Stat. 649; amended P.L. 101–510, § 714, Nov. 5, 1990, 104 Stat. 1534; P.L. 103–160, § 712(a)(1), Nov. 30, 1993, 107 Stat. 1688; revised in its entirety P.L. 103–160, § 712(a)(1), Nov. 30, 1993, 107 Stat. 1688; P.L. 104–106, § 733(a), Feb. 10, 1996, 110 Stat. 381; P.L. 105–85, § 736(a), Nov. 18, 1997, 111 Stat. 1814; P.L. 105–261, § 733(a), Oct. 17, 1998, 112 Stat. 2072; P.L. 106–398, § 1[705], Oct. 30, 2000, 114 Stat. 1654, 1654A–175.)

§ 1092. Studies and demonstration projects relating to delivery of health and medical care

(a)(1) The Secretary of Defense, in consultation with the other administering Secretaries, shall conduct studies and demonstration projects on the health care delivery system of the uniformed services with a view to improving the quality, efficiency, convenience, and cost effectiveness of providing health care services (including dental care services) under this title to members and former mem-

bers and their dependents. Such studies and demonstration projects may include the following:

(A) Alternative methods of payment for health and medical care services.

(B) Cost-sharing by eligible beneficiaries.

(C) Methods of encouraging efficient and economical delivery of health and medical care services.

(D) Innovative approaches to delivery and financing of health and medical care services.

(E) Alternative approaches to reimbursement for the administrative charges of health care plans.

(F) Prepayment for medical care services provided to maintain the health of a defined population.

(2) The Secretary of Defense shall include in the studies conducted under paragraph (1) alternative programs for the provision of dental care to the spouses and dependents of members of the uniformed services who are on active duty, including a program under which dental care would be provided the spouses and dependents of such members under insurance or dental plan contracts. A demonstration project may not be conducted under this section that provides for the furnishing of dental care under an insurance or dental plan contract.

(b) Subject to the availability of appropriations for that purpose, the Secretary of Defense may enter into contracts with public or private agencies, institutions, and organizations to conduct studies and demonstration projects under subsection (a).

(c) The Secretary of Defense may obtain the advice and recommendations of such advisory committees as the Secretary considers appropriate. Each such committee consulted by the Secretary under this subsection shall evaluate the proposed study or demonstration project as to the soundness of the objectives of such study or demonstration project, the likelihood of obtaining productive results based on such study or demonstration project, the resources which were required to conduct such study or demonstration project, and the relationship of such study or demonstration project to other ongoing or completed studies and demonstration projects.

(Added P.L. 98–94, § 933(a)(1), Sept. 24, 1983, 97 Stat. 650; amended P.L. 98–557, § 19(14), Oct. 30, 1984, 98 Stat. 2870; P.L. 105–261, § 1031(a), Oct. 17, 1998, 112 Stat. 2123.)

§ 1093. Performance of abortions: restrictions

(a) RESTRICTION ON USE OF FUNDS.—Funds available to the Department of Defense may not be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

(b) RESTRICTION ON USE OF FACILITIES.—No medical treatment facility or other facility of the Department of Defense may be used to perform an abortion except where the life of the mother would be endangered if the fetus were carried to term or in a case in which the pregnancy is the result of an act of rape or incest.

(Added P.L. 98–525, § 1401(e)(5), Oct. 19, 1984, 98 Stat. 2617; amended P.L. 104–106, § 738(a), (b)(1), Feb. 10, 1996, 110 Stat. 383.)

§ 1094. Licensure requirement for health-care professionals

(a)(1) A person under the jurisdiction of the Secretary of a military department may not provide health care independently as a health-care professional under this chapter unless the person has a current license to provide such care. In the case of a physician, the physician may not provide health care as a physician under this chapter unless the current license is an unrestricted license that is not subject to limitation on the scope of practice ordinarily granted to other physicians for a similar specialty by the jurisdiction that granted the license.

(2) The Secretary of Defense may waive paragraph (1) with respect to any person in unusual circumstances. The Secretary shall prescribe by regulation the circumstances under which such a waiver may be granted.

(b) The commanding officer of each health care facility of the Department of Defense shall ensure that each person who provides health care independently as a health-care professional at the facility meets the requirement of subsection (a).

(c)(1) A person (other than a person subject to chapter 47 of this title) who provides health care in violation of subsection (a) is subject to a civil money penalty of not more than $5,000.

(2) The provisions of subsections (c) and (e) through (h) of section 1128A of the Social Security Act (42 U.S.C. 1320a–7a) shall apply to the imposition of a civil money penalty under paragraph (1) in the same manner as they apply to the imposition of a civil money penalty under that section, except that for purposes of this subsection—

(A) a reference to the Secretary in that section is deemed a reference to the Secretary of Defense; and

(B) a reference to a claimant in subsection (e) of that section is deemed a reference to the person described in paragraph (1).

(d)(1) Notwithstanding any law regarding the licensure of health care providers, a health-care professional described in paragraph (2) may practice the health profession or professions of the health-care professional in any State, the District of Columbia, or a Commonwealth, territory, or possession of the United States, regardless of whether the practice occurs in a health care facility of the Department of Defense, a civilian facility affiliated with the Department of Defense, or any other location authorized by the Secretary of Defense.

(2) A health-care professional referred to in paragraph (1) is a member of the armed forces who—

(A) has a current license to practice medicine, osteopathic medicine, dentistry, or another health profession; and

(B) is performing authorized duties for the Department of Defense.

(e) In this section:

(1) The term "license"—

(A) means a grant of permission by an official agency of a State, the District of Columbia, or a Commonwealth, territory, or possession of the United States to provide

health care independently as a health-care professional; and

(B) includes, in the case of such care furnished in a foreign country by any person who is not a national of the United States, a grant of permission by an official agency of that foreign country for that person to provide health care independently as a health-care professional.

(2) The term "health-care professional" means a physician, dentist, clinical psychologist, or nurse and any other person providing direct patient care as may be designated by the Secretary of Defense in regulations.

(Added P.L. 99–145, § 653(a)(1), Nov. 8, 1985, 99 Stat. 658; amended P.L. 99–661, § 1343(a)(1), Nov. 14, 1986, 100 Stat. 3992; P.L. 100–189, § 1622(e)(2)–(3), Nov. 29, 1989, 103 Stat. 1605; P.L. 101–189, §§ 653(e)(1), 1622(e)(3), Nov. 29, 1989, 103 Stat. 1463, 1605; P.L. 105–85, § 737, Nov. 18, 1997, 111 Stat. 1814; P.L. 105–261, § 743(a), Oct. 17, 1998, 112 Stat. 2072.)

§ 1094a. Continuing medical education requirements: system for monitoring physician compliance [9]

The Secretary of Defense shall establish a mechanism for ensuring that each person under the jurisdiction of the Secretary of a military department who provides health care under this chapter as a physician satisfies the continuing medical education requirements applicable to the physician.

(Added P.L. 105–261, § 734(b), Oct. 17, 1998, 112 Stat. 2073.)

§ 1095. Health care services incurred on behalf of covered beneficiaries: collection from third-party payers

(a)(1) In the case of a person who is a covered beneficiary, the United States shall have the right to collect from a third-party payer reasonable charges for health care services incurred by the United States on behalf of such person through a facility of the uniformed services to the extent that the person would be eligible to receive reimbursement or indemnification from the third-party payer if the person were to incur such charges on the person's own behalf. If the insurance, medical service, or health plan of that payer includes a requirement for a deductible or copayment by the beneficiary of the plan, then the amount that the United States may collect from the third-party payer is a reasonable charge for the care provided less the appropriate deductible or copayment amount.

(2) A covered beneficiary may not be required to pay an additional amount to the United States for health care services by reason of this section.

(b) No provision of any insurance, medical service, or health plan contract or agreement having the effect of excluding from coverage or limiting payment of charges for certain care shall operate to prevent collection by the United States under subsection (a) if that care is provided—

(1) through a facility of the uniformed services;

(2) directly or indirectly by a governmental entity;

[9] Section 734(c)(2) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (P.L. 105–261; 112 Stat. 2073) provides that the system required by section 1094a shall take effect on October 17, 2001.

(3) to an individual who has no obligation to pay for that care or for whom no other person has a legal obligation to pay; or

(4) by a provider with which the third party payer has no participation agreement.

(c) Under regulations prescribed under subsection (f), records of the facility of the uniformed services that provided health care services to a beneficiary of an insurance, medical service, or health plan of a third-party payer shall be made available for inspection and review by representatives of the payer from which collection by the United States is sought.

(d) Notwithstanding subsections (a) and (b), and except as provided in subsection (j), collection may not be made under this section in the case of a plan administered under title XVIII or XIX of the Social Security Act (42 U.S.C. 1395 et seq.).

(e)(1) The United States may institute and prosecute legal proceedings against a third-party payer to enforce a right of the United States under this section.

(2) The administering Secretary may compromise, settle, or waive a claim of the United States under this section.

(f) The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations for the administration of this section. Such regulations shall provide for computation of the reasonable cost of health care services. Computation of such reasonable cost may be based on—

(1) per diem rates;

(2) all-inclusive per visit rates;

(3) diagnosis-related groups; or

(4) such other method as may be appropriate.

(g)(1) Amounts collected under this section from a third-party payer or under any other provision of law from any other payer for health care services provided at or through a facility of the uniformed services shall be credited to the appropriation supporting the maintenance and operation of the facility and shall not be taken into consideration in establishing the operating budget of the facility.

(2) Not later than February 15 of each year, the Secretary of Defense shall submit to Congress a report specifying for each facility of the uniformed services the amount credited to the facility under this subsection during the preceding fiscal year.

(h) In this section:

(1) The term "third-party payer" means an entity that provides an insurance, medical service, or health plan by contract or agreement, including an automobile liability insurance or no fault insurance carrier, and any other plan or program that is designed to provide compensation or coverage for expenses incurred by a beneficiary for health care services or products. Such term also includes entities described in subsection (j) under the terms and to the extent provided in such subsection and a workers' compensation program or plan.

(2) The term "insurance, medical service, or health plan" includes a preferred provider organization, an insurance plan described as Medicare supplemental insurance, and a personal injury protection plan or medical payments benefit plan for

personal injuries resulting from the operation of a motor vehicle.

(3) The term "health care services" includes products provided or purchased through a facility of the uniformed services.

(i)(1) In the case of a third-party payer that is an automobile liability insurance or no fault insurance carrier, the right of the United States to collect under this section shall extend to health care services provided to a person entitled to health care under section 1074(a) of this title.

(2) In cases in which a tort liability is created upon some third person, collection from a third-party payer that is an automobile liability insurance carrier shall be governed by the provisions of Public Law 87–693 (42 U.S.C. 2651 et seq.).

(j) The Secretary of Defense may enter into an agreement with any health maintenance organization, competitive medical plan, health care prepayment plan, or other similar plan (pursuant to regulations issued by the Secretary) providing for collection under this section from such organization or plan for services provided to a covered beneficiary who is an enrollee in such organization or plan.

(k)(1) To improve the administration of this section and sections 1079(j)(1) and 1086(d) of this title, the Secretary of Defense, in consultation with the other administering Secretaries, may prescribe regulations providing for the collection of information regarding insurance, medical service, or health plans of third-party payers held by covered beneficiaries.

(2) The collection of information under regulations prescribed under paragraph (1) shall be conducted in the same manner as is provided in section 1862(b)(5) of the Social Security Act (42 U.S.C. 1395y(b)(5)). The Secretary may provide for obtaining from the Commissioner of Social Security employment information comparable to the information provided to the Administrator of the Health Care Financing Administration pursuant to such section. Such regulations may require the mandatory disclosure of Social Security account numbers for all covered beneficiaries.

(3) The Secretary may disclose relevant employment information collected under this subsection to fiscal intermediaries or other designated contractors.

(4) The Secretary may provide for contacting employers of covered beneficiaries to obtain group health plan information comparable to the information authorized to be obtained under section 1862(b)(5)(C) of the Social Security Act (42 U.S.C. 1395y(b)(5)(C)). Notwithstanding clause (iii) of such section, clause (ii) of such section regarding the imposition of civil money penalties shall apply to the collection of information under this paragraph.

(5) Information obtained under this subsection may not be disclosed for any purpose other than to carry out the purpose of this section and sections 1079(j)(1) and 1086(d) of this title.

(Added P.L. 99–272, § 2001(a)(1), April 7, 1986, 100 Stat. 100; amended P.L. 101–189, §§ 727(a), 1622(e)(5) Nov. 29, 1989, 103 Stat. 1480, 1605; P.L. 101–510, § 713, Nov. 5, 1990, 104 Stat. 1583; P.L. 102–25, § 701(j)(8), April 6, 1991, 105 Stat. 116; P.L. 102–190, § 714, Dec. 5, 1991, 105 Stat. 1403; P.L. 103–160, § 713, Nov. 30, 1993, 107 Stat. 1689–1690; P.L. 103–337, §§ 714(b), 1070(b)(6), Oct. 5, 1994, 108 Stat. 2802, 2857; P.L. 104–106, § 734, Feb. 10, 1996, 110 Stat. 381; P.L. 104–201, § 735(a), (b), Sept. 23, 1996, 110 Stat. 2598; P.L. 106–65, § 716(c)(1), Oct. 5, 1999, 113 Stat. 691.)

§ 1095a. Medical care: members held as captives and their dependents

(a) Under regulations prescribed by the President, the Secretary concerned shall pay (by advancement or reimbursement) any person who is a former captive, and any dependent of that person or of a person who is in a captive status, for health care and other expenses related to such care, to the extent that such care—

(1) is incident to the captive status; and

(2) is not covered—

(A) by any other Government medical or health program; or

(B) by insurance.

(b) In the case of any person who is eligible for medical care under section 1074 or 1076 of this title, such regulations shall require that, whenever practicable, such care be provided in a facility of the uniformed services.

(c) In this section:

(1) The terms "captive status" and "former captive" have the meanings given those terms in section 559 of title 37.

(2) The term "dependent" has the meaning given that term in section 551 of that title.

(Added as § 1095 P.L. 99–399, § 806(c)(1), Aug. 27, 1986, 100 Stat. 886; redesignated § 1095a P.L. 100–26, § 7(e)(2), April 21, 1987, 101 Stat. 281; amended P.L. 100–526, § 106(b)(1), Oct. 24, 1988, 102 Stat. 2625.)

§ 1095b. TRICARE program: contractor payment of certain claims

(a) PAYMENT OF CLAIMS.—(1) The Secretary of Defense may authorize a contractor under the TRICARE program to pay a claim described in paragraph (2) before seeking to recover from a third-party payer the costs incurred by the contractor to provide health care services that are the basis of the claim to a beneficiary under such program.

(2) A claim under this paragraph is a claim—

(A) that is submitted to the contractor by a provider under the TRICARE program for payment for services for health care provided to a covered beneficiary; and

(B) that is identified by the contractor as a claim for which a third-party payer may be liable.

(b) RECOVERY FROM THIRD-PARTY PAYERS.—The United States shall have the same right to collect charges related to claims described in subsection (a) as charges for claims under section 1095 of this title.

(c) DEFINITION OF THIRD-PARTY PAYER.—In this section, the term "third-party payer" has the meaning given that term in section 1095(h) of this title, except that such term excludes primary medical insurers.

(Added P.L. 105–261, § 711(a), Oct. 17, 1998, 112 Stat. 2058; amended P.L. 106–65, § 716(c)(2), Oct. 5, 1999, 113 Stat. 692.)

§ 1095c. TRICARE program: facilitation of processing of claims

(a) REDUCTION OF PROCESSING TIME.—(1) With respect to claims for payment for medical care provided under the TRICARE

program, the Secretary of Defense shall implement a system for processing of claims under which—

(A) 95 percent of all clean claims must be processed not later than 30 days after the date that such claims are submitted to the claims processor; and

(B) 100 percent of all clean claims must be processed not later than 100 days after the date that such claims are submitted to the claims processor.

(2) The Secretary may, under the system required by paragraph (1) and consistent with the provisions in chapter 39 of title 31 (commonly referred to as the "Prompt Payment Act"), require that interest be paid on clean claims that are not processed within 30 days.

(3) For purposes of this subsection, the term "clean claim" means a claim that has no defect, impropriety (including a lack of any required substantiating documentation), or particular circumstance requiring special treatment that prevents timely payment on the claim under this section.

(b) REQUIREMENT TO PROVIDE START-UP TIME FOR CERTAIN CONTRACTORS.—(1) The Secretary of Defense shall not require that a contractor described in paragraph (2) begin to provide managed care support pursuant to a contract to provide such support under the TRICARE program until at least nine months after the date of the award of the contract. In such case the contractor may begin to provide managed care support pursuant to the contract as soon as practicable after the award of the contract, but in no case later than one year after the date of such award.

(2) A contractor under this paragraph is a contractor who is awarded a contract to provide managed care support under the TRICARE program—

(A) who has not previously been awarded such a contract by the Department of Defense; or

(B) who has previously been awarded such a contract by the Department of Defense but for whom the subcontractors have not previously been awarded the subcontracts for such a contract.

(c) INCENTIVES FOR ELECTRONIC PROCESSING.—The Secretary of Defense shall require that new contracts for managed care support under the TRICARE program provide that the contractor be permitted to provide financial incentives to health care providers who file claims for payment electronically.

(Added P.L. 106–65, § 713(a)(1), Oct. 5, 1999, 113 Stat. 688.)

§ 1095d. TRICARE program: waiver of certain deductibles

(a) WAIVER AUTHORIZED.—The Secretary of Defense may waive the deductible payable for medical care provided under the TRICARE program to an eligible dependent of—

(1) a member of a reserve component on active duty pursuant to a call or order to active duty for a period of less than one year; or

(2) a member of the National Guard on full-time National Guard duty pursuant to a call or order to full-time National Guard duty for a period of less than one year.

(b) ELIGIBLE DEPENDENT.—As used in this section, the term "eligible dependent" means a dependent described in subparagraph (A), (D), or (I) of section 1072(2) of this title.

(Added P.L. 106–65, § 714(a), Oct. 5, 1999, 113 Stat. 689; P.L. 106–398, § 1[1087(a)(7)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290.)

§ 1095e. TRICARE program: beneficiary counseling and assistance coordinators

(a) ESTABLISHMENT OF POSITIONS.—The Secretary of Defense shall require in regulations that—

(1) each lead agent under the TRICARE program—

(A) designate a person to serve full-time as a beneficiary counseling and assistance coordinator for beneficiaries under the TRICARE program; and

(B) provide for toll-free telephone communication between such beneficiaries and the beneficiary counseling and assistance coordinator; and

(2) the commander of each military medical treatment facility under this chapter designate a person to serve, as a primary or collateral duty, as beneficiary counseling and assistance coordinator for beneficiaries under the TRICARE program served at that facility.

(b) DUTIES.—The Secretary shall prescribe the duties of the position of beneficiary counseling and assistance coordinator in the regulations required by subsection (a).

(Added P.L. 106–65, § 715(a)(1), Oct. 5, 1999, 113 Stat. 690.)

§ 1095f. TRICARE program: referrals for specialty health care

The Secretary of Defense shall ensure that no contract for managed care support under the TRICARE program includes any requirement that a managed care support contractor require a primary care or specialty care provider to obtain prior authorization before referring a patient to a specialty care provider that is part of the network of health care providers or institutions of the contractor.[10]

(Added P.L. 106–398, § 1[728(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–189.)

§ 1096. Military-civilian health services partnership program

(a) RESOURCES SHARING AGREEMENTS.—The Secretary of Defense may enter into an agreement providing for the sharing of resources between facilities of the uniformed services and facilities of a civilian health care provider or providers that the Secretary contracts with under section 1079, 1086, or 1097 of this title if the Secretary determines that such an agreement would result in the delivery of health care to which covered beneficiaries are entitled under this chapter in a more effective, efficient, or economical manner.

(b) ELIGIBLE RESOURCES.—An agreement entered into under subsection (a) may provide for the sharing of—

[10]Section 1095f applies with respect to a TRICARE managed care support contract entered into by the Department of Defense after October 30, 2001, pursuant to section 728(c) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654A–189).

(1) personnel (including support personnel);

(2) equipment;

(3) supplies; and

(4) any other items or facilities necessary for the provision of health care services.

(c) COMPUTATION OF CHARGES.—A covered beneficiary, with respect to care provided to such beneficiary in facilities of the uniformed services under a sharing agreement entered into under subsection (a), shall pay—

(1) in the case of a dependent, the charges prescribed by section 1078 of this title; and

(2) in the case of a member or former member entitled to retired or retainer pay, the charges prescribed by section 1075 of this title.

(d) REIMBURSEMENT FOR LICENSE FEES.—In any case in which it is necessary for a member of the uniformed services to pay a professional license fee imposed by a government in order to provide health care services at a facility of a civilian health care provider pursuant to an agreement entered into under subsection (a), the Secretary of Defense may reimburse the member for up to $500 of the amount of the license fee paid by the member.

(Added P.L. 99–661, § 701(a)(1), Nov. 14, 1986, 100 Stat. 3894; amended P.L. 103–337, § 712, Oct. 5, 1994, 108 Stat. 2801.)

§ 1097. Contracts for medical care for retirees, dependents, and survivors: alternative delivery of health care

(a) IN GENERAL.—The Secretary of Defense, after consulting with the other administering Secretaries, may contract for the delivery of health care to which covered beneficiaries are entitled under this chapter. The Secretary may enter into a contract under this section with any of the following:

(1) Health maintenance organizations.

(2) Preferred provider organizations.

(3) Individual providers, individual medical facilities, or insurers.

(4) Consortiums of such providers, facilities, or insurers.

(b) SCOPE OF COVERAGE UNDER HEALTH CARE PLANS.—A contract entered into under this section may provide for the delivery of—

(1) selected health care services;

(2) total health care services for selected covered beneficiaries; or

(3) total health care services for all covered beneficiaries who reside in a geographical area designated by the Secretary.

(c) COORDINATION WITH FACILITIES OF THE UNIFORMED SERVICES.—The Secretary of Defense may provide for the coordination of health care services provided pursuant to any contract or agreement under this section with those services provided in medical treatment facilities of the uniformed services. Subject to the availability of space and facilities and the capabilities of the medical or dental staff, the Secretary may not deny access to facilities of the uniformed services to a covered beneficiary on the basis of whether the beneficiary enrolled or declined enrollment in any program established under, or operating in connection with, any contract

under this section. Notwithstanding the preferences established by sections 1074(b) and 1076 of this title, the Secretary shall, as an incentive for enrollment, establish reasonable preferences for services in facilities of the uniformed services for covered beneficiaries enrolled in any program established under, or operating in connection with, any contract under this section.

(d) COORDINATION WITH OTHER HEALTH CARE PROGRAMS.—In the case of a covered beneficiary who is enrolled in a managed health care program not operated under the authority of this chapter, the Secretary may contract under this section with such other managed health care program for the purpose of coordinating the beneficiary's dual entitlements under such program and this chapter. A managed health care program with which arrangements may be made under this subsection includes any health maintenance organization, competitive medical plan, health care prepayment plan, or other managed care program recognized pursuant to regulations issued by the Secretary.

(e) CHARGES FOR HEALTH CARE.—The Secretary of Defense may prescribe by regulation a premium, deductible, copayment, or other charge for health care provided under this section. In the case of contracts for health care services under this section or health care plans offered under section 1099 of this title for which the Secretary permits covered beneficiaries who are covered by section 1086 of this title and who participate in such contracts or plans to pay an enrollment fee in lieu of meeting the applicable deductible amount specified in section 1086(b) of this title, the Secretary may establish the same (or a lower) enrollment fee for covered beneficiaries described in section 1086(d)(1) of this title who also participate in such contracts or plans. Without imposing additional costs on covered beneficiaries who participate in contracts for health care services under this section or health care plans offered under section 1099 of this title, the Secretary shall permit such covered beneficiaries to pay, on a quarterly basis, any enrollment fee required for such participation.

(Added P.L. 99–661, § 701(a)(1), Nov. 14, 1986, 100 Stat. 3895; amended P.L. 103–337, §§ 713, 714(a), Oct. 5, 1994, 108 Stat. 2802; P.L. 104–106, § § 712, 713, Feb. 10, 1996, 110 Stat. 374.)

§ 1097a. TRICARE Prime: automatic enrollments; payment options

(a) AUTOMATIC ENROLLMENT OF CERTAIN DEPENDENTS.—Each dependent of a member of the uniformed services in grade E4 or below who is entitled to medical and dental care under section 1076(a)(2)(A) of this title and resides in the catchment area of a facility of a uniformed service offering TRICARE Prime shall be automatically enrolled in TRICARE Prime at the facility. The Secretary concerned shall provide written notice of the enrollment to the member. The enrollment of a dependent of the member may be terminated by the member or the dependent at any time.

(b) AUTOMATIC RENEWAL OF ENROLLMENTS OF COVERED BENEFICIARIES.—(1) An enrollment of a covered beneficiary in TRICARE Prime shall be automatically renewed upon the expiration of the enrollment unless the renewal is declined.

(2) Not later than 15 days before the expiration date for an enrollment of a covered beneficiary in TRICARE Prime, the Secretary concerned shall—

(A) transmit a written notification of the pending expiration and renewal of enrollment to the covered beneficiary or, in the case of a dependent of a member of the uniformed services, to the member; and

(B) afford the beneficiary or member, as the case may be, an opportunity to decline the renewal of enrollment.

(c) PAYMENT OPTIONS FOR RETIREES.—A member or former member of the uniformed services eligible for medical care and dental care under section 1074(b) of this title may elect to have any fee payable by the member or former member for an enrollment in TRICARE Prime withheld from the member's retired pay, retainer pay, or equivalent pay, as the case may be, or to be paid from a financial institution through electronic transfers of funds. The fee shall be paid in accordance with the election. A member may elect under this section to pay the fee in full at the beginning of the enrollment period or to make payments on a monthly or quarterly basis.

(d) REGULATIONS AND EXCEPTIONS.—The Secretary of Defense shall prescribe regulations, including procedures, to carry out this section. Regulations prescribed to carry out the automatic enrollment requirements under this section may include such exceptions to the automatic enrollment procedures as the Secretary determines appropriate for the effective operation of TRICARE Prime.

(e)[11] NO COPAYMENT FOR IMMEDIATE FAMILY.—No copayment shall be charged a member for care provided under TRICARE Prime to a dependent of a member of the uniformed services described in subparagraph (A), (D), or (I) of section 1072 of this title.

(f) DEFINITIONS.—In this section:

(1) The term "TRICARE Prime" means the managed care option of the TRICARE program.

(2) The term "catchment area", with respect to a facility of a uniformed service, means the service area of the facility, as designated under regulations prescribed by the administering Secretaries.

(Added P.L. 105–261, § 712(a), Oct. 17, 1998, 112 Stat. 2058; P.L. 106–398, § 1[752(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–195.)

§ 1097b. TRICARE program: financial management

(a) REIMBURSEMENT OF PROVIDERS.—(1) Subject to paragraph (2), the Secretary of Defense may reimburse health care providers under the TRICARE program at rates higher than the reimbursement rates otherwise authorized for the providers under that program if the Secretary determines that application of the higher rates is necessary in order to ensure the availability of an adequate number of qualified health care providers under that program.

(2) The amount of reimbursement provided under paragraph (1) with respect to a health care service may not exceed the lesser of the following:

[11] Subsection (e) takes effect April 28, 2001, and applies with respect to care provided on or after that date, pursuant to section 752(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654A–195).

(A) The amount equal to the local fee for service charge for the service in the service area in which the service is provided as determined by the Secretary based on one or more of the following payment rates:

(i) Usual, customary, and reasonable.

(ii) The Health Care Finance Administration's Resource Based Relative Value Scale.

(iii) Negotiated fee schedules.

(iv) Global fees.

(v) Sliding scale individual fee allowances.

(B) The amount equal to 115 percent of the CHAMPUS maximum allowable charge for the service.

(b) THIRD-PARTY COLLECTIONS.—(1) A medical treatment facility of the uniformed services under the TRICARE program has the same right as the United States under section 1095 of this title to collect from a third-party payer the reasonable charges for health care services described in paragraph (2) that are incurred by the facility on behalf of a covered beneficiary under that program.

(2) The Secretary of Defense shall prescribe regulations for the administration of this subsection. The regulations shall set forth the method to be used for the computation of the reasonable charges for inpatient, outpatient, and other health care services. The method of computation may be—

(A) a method that is based on—

(i) per diem rates;

(ii) all-inclusive rates for each visit;

(iii) diagnosis-related groups; or

(iv) rates prescribed under the regulations implementing sections 1079 and 1086 of this title; or

(B) any other method considered appropriate.

(c) CONSULTATION REQUIREMENT.—The Secretary of Defense shall carry out the responsibilities under this section after consultation with the other administering Secretaries.

(Added P.L. 106–65, § 716(a)(1), Oct. 5, 1999, 113 Stat. 690.)

§ 1098. Incentives for participation in cost-effective health care plans

(a) WAIVER OF LIMITATIONS AND COPAYMENTS.—Subject to subsection (b), the Secretary of Defense, with respect to any plan contracted for under the authority of section 1079 or 1086 of this title, may waive, in whole or in part—

(1) any limitation set out in the second sentence of section 1079(a) of this title; or

(2) any requirement for payment by the patient under section 1079(b) or 1086(b) of this title.

(b) DETERMINATION AND REPORT.—(1) Subject to paragraph (3), the Secretary may waive a limitation or requirement as authorized by subsection (a) if the Secretary determines that during the period of the waiver such a plan will—

(A) be less costly to the Government than a plan subject to such limitations or payment requirements; or

(B) provide better services than those provided by a plan subject to such limitations or payment requirements at no additional cost to the Government.

(2) 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 with respect to a waiver under paragraph (1), including a comparison of costs of and benefits available under—

(A) a plan with respect to which the limitations and payment requirements are waived; and

(B) a plan with respect to which there is no such waiver.

(3) A waiver under paragraph (1) may not take effect until the end of the 180-day period beginning on the date on which the Secretary submits the report required by paragraph (2) with respect to such waiver.

(Added P.L. 99–661, § 701(a)(1), Nov. 14, 1986, 100 Stat. 3895; amended P.L. 101–510, § 1484(h)(1), Nov. 5, 1990, 104 Stat. 1717; P.L. 104–106, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 1099. Health care enrollment system

(a) ESTABLISHMENT OF SYSTEM.—The Secretary of Defense, after consultation with the other administering Secretaries, shall establish a system of health care enrollment for covered beneficiaries who reside in the United States.

(b) DESCRIPTION OF SYSTEM.—Such system shall—

(1) allow covered beneficiaries to elect a health care plan from eligible health care plans designated by the Secretary of Defense; or

(2) if necessary in order to ensure full use of facilities of the uniformed services in a geographical area, assign covered beneficiaries who reside in such area to such facilities.

(c) HEALTH CARE PLANS AVAILABLE UNDER SYSTEM.—A health care plan designated by the Secretary of Defense under the system described in subsection (a) shall provide all health care to which a covered beneficiary is entitled under this chapter. Such a plan may consist of any of the following:

(1) Use of facilities of the uniformed services.

(2) The Civilian Health and Medical Program of the Uniformed Services.

(3) Any other health care plan contracted for by the Secretary of Defense.

(4) Any combination of the plans described in paragraphs (1), (2), and (3).

(d) REGULATIONS.—The Secretary of Defense, after consultation with the other administering Secretaries, shall prescribe regulations to carry out this section.

(Added P.L. 99–661, § 701(a)(1), Nov. 14, 1986, 100 Stat. 3896.)

§ 1100. Defense Health Program Account

(a) ESTABLISHMENT OF ACCOUNT.—(1) There is hereby established in the Department of Defense an account to be known as the "Defense Health Program Account". All sums appropriated to carry out the functions of the Secretary of Defense with respect to medical and health care programs of the Department of Defense shall be appropriated to the account.

(2) Of the total amount appropriated for a fiscal year for programs and activities carried out under this chapter, the amount

equal to three percent of such total amount shall remain available for obligation until the end of the following fiscal year.

(b) OBLIGATION OF AMOUNTS FROM ACCOUNT BY SECRETARY OF DEFENSE.—The Secretary of Defense may obligate or expend funds from the account for purposes of conducting programs and activities under this chapter, including contracts entered into under section 1079, 1086, 1092, or 1097 of this title, to the extent amounts are available in the account.

(c) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(Added P.L. 99–661, § 701(a), Nov. 14, 1986, 100 Stat. 3896; and amended P.L. 104–106, § 735(a)–(d)(1), Feb. 10, 1996, 110 Stat. 382.)

§ 1101. Resource allocation methods: capitation or diagnosis-related groups

(a) ESTABLISHMENT OF CAPITATION OR DRG METHOD.—The Secretary of Defense, after consultation with the other administering Secretaries, shall establish by regulation the use of capitation or diagnosis-related groups as the primary criteria for allocation of resources to facilities of the uniformed services.

(b) EXCEPTION FOR MOBILIZATION MISSIONS.—Capitation or diagnosis-related groups shall not be used to allocate resources to the facilities of the uniformed services to the extent that such resources are required by such facilities for mobilization missions.

(c) CONTENT OF REGULATIONS.—Such regulations may establish a system of diagnosis-related groups similar to the system established under section 1886(d)(4) of the Social Security Act (42 U.S.C. 1395ww(d)(4)). Such regulations may include the following:

(1) A classification of inpatient treatments by diagnosis-related groups and a similar classification of outpatient treatment.

(2) A methodology for classifying specific treatments within such groups.

(3) An appropriate weighting factor for each such diagnosis-related group which reflects the relative resources used by a facility of a uniformed service with respect to treatments classified within that group compared to treatments classified within other groups.

(4) An appropriate method for calculating or estimating the annual per capita costs of providing comprehensive health care services to members of the uniformed services on active duty and covered beneficiaries.

(Added P.L. 99–661, § 701(a), Nov. 14, 1986, 100 Stat. 3897; amended P.L. 100–456, § 1233(e), Sept. 29, 1988, 102 Stat. 2057; P.L. 103–160, § 714(a), (b)(1), Nov. 30, 1993, 107 Stat. 1690.)

§ 1102. Confidentiality of medical quality assurance records: qualified immunity for participants

(a) CONFIDENTIALITY OF RECORDS.—Medical quality assurance records created by or for the Department of Defense as part of a medical quality assurance program are confidential and privileged. Such records may not be disclosed to any person or entity, except as provided in subsection (c).

(b) PROHIBITION ON DISCLOSURE AND TESTIMONY.—(1) No part of any medical quality assurance record described in subsection (a)

may be subject to discovery or admitted into evidence in any judicial or administrative proceeding, except as provided in subsection (c).

(2) A person who reviews or creates medical quality assurance records for the Department of Defense or who participates in any proceeding that reviews or creates such records may not be permitted or required to testify in any judicial or administrative proceeding with respect to such records or with respect to any finding, recommendation, evaluation, opinion, or action taken by such person or body in connection with such records except as provided in this section.

(c) AUTHORIZED DISCLOSURE AND TESTIMONY.—(1) Subject to paragraph (2), a medical quality assurance record described in subsection (a) may be disclosed, and a person referred to in subsection (b) may give testimony in connection with such a record, only as follows:

(A) To a Federal executive agency or private organization, if such medical quality assurance record or testimony is needed by such agency or organization to perform licensing or accreditation functions related to Department of Defense health care facilities or to perform monitoring, required by law, of Department of Defense health care facilities.

(B) To an administrative or judicial proceeding commenced by a present or former Department of Defense health care provider concerning the termination, suspension, or limitation of clinical privileges of such health care provider.

(C) To a governmental board or agency or to a professional health care society or organization, if such medical quality assurance record or testimony is needed by such board, agency, society, or organization to perform licensing, credentialing, or the monitoring of professional standards with respect to any health care provider who is or was a member or an employee of the Department of Defense.

(D) To a hospital, medical center, or other institution that provides health care services, if such medical quality assurance record or testimony is needed by such institution to assess the professional qualifications of any health care provider who is or was a member or employee of the Department of Defense and who has applied for or been granted authority or employment to provide health care services in or on behalf of such institution.

(E) To an officer, employee, or contractor of the Department of Defense who has a need for such record or testimony to perform official duties.

(F) To a criminal or civil law enforcement agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such agency or instrumentality makes a written request that such record or testimony be provided for a purpose authorized by law.

(G) In an administrative or judicial proceeding commenced by a criminal or civil law enforcement agency or instrumentality referred to in subparagraph (F), but only with respect to the subject of such proceeding.

(2) With the exception of the subject of a quality assurance action, the identity of any person receiving health care services from the Department of Defense or the identity of any other person associated with such department for purposes of a medical quality assurance program that is disclosed in a medical quality assurance record described in subsection (a) shall be deleted from that record or document before any disclosure of such record is made outside the Department of Defense. Such requirement does not apply to the release of information pursuant to section 552a of title 5.

(d) DISCLOSURE FOR CERTAIN PURPOSES.—(1) Nothing in this section shall be construed as authorizing or requiring the withholding from any person or entity aggregate statistical information regarding the results of Department of Defense medical quality assurance programs.

(2) Nothing in this section shall be construed as authority to withhold any medical quality assurance record from a committee of either House of Congress, any joint committee of Congress, or the General Accounting Office if such record pertains to any matter within their respective jurisdictions.

(e) PROHIBITION ON DISCLOSURE OF RECORD OR TESTIMONY.—A person or entity having possession of or access to a record or testimony described by this section may not disclose the contents of such record or testimony in any manner or for any purpose except as provided in this section.

(f) EXEMPTION FROM FREEDOM OF INFORMATION ACT.—Medical quality assurance records described in subsection (a) may not be made available to any person under section 552 of title 5.

(g) LIMITATION ON CIVIL LIABILITY.—A person who participates in or provides information to a person or body that reviews or creates medical quality assurance records described in subsection (a) shall not be civilly liable for such participation or for providing such information if the participation or provision of information was in good faith based on prevailing professional standards at the time the medical quality assurance program activity took place.

(h) APPLICATION TO INFORMATION IN CERTAIN OTHER RECORDS.—Nothing in this section shall be construed as limiting access to the information in a record created and maintained outside a medical quality assurance program, including a patient's medical records, on the grounds that the information was presented during meetings of a review body that are part of a medical quality assurance program.

(i) REGULATIONS.—The Secretary of Defense shall prescribe regulations to implement this section.

(j) DEFINITIONS.—In this section:

(1) The term "medical quality assurance program" means any activity carried out before, on, or after November 14, 1986 by or for the Department of Defense to assess the quality of medical care, including activities conducted by individuals, military medical or dental treatment facility committees, or other review bodies responsible for quality assurance, credentials, infection control, patient care assessment (including treatment procedures, blood, drugs, and therapeutics), medical records, health resources management review and identification and prevention of medical or dental incidents and risks.

(2) The term "medical quality assurance record" means the proceedings, records, minutes, and reports that emanate from quality assurance program activities described in paragraph (1) and are produced or compiled by the Department of Defense as part of a medical quality assurance program.

(3) The term "health care provider" means any military or civilian health care professional who, under regulations of a military department, is granted clinical practice privileges to provide health care services in a military medical or dental treatment facility or who is licensed or certified to perform health care services by a governmental board or agency or professional health care society or organization.

(k) PENALTY.—Any person who willfully discloses a medical quality assurance record other than as provided in this section, knowing that such record is a medical quality assurance record, shall be fined not more than $3,000 in the case of a first offense and not more than $20,000 in the case of a subsequent offense.

(Added P.L. 99–661, § 705(a), Nov. 14, 1986, 100 Stat. 3902; amended P.L. 100–180, § 1231(5), Dec. 4, 1987, 101 Stat. 1160; P.L. 101–189, § 653(f), Nov. 29, 1989, 103 Stat. 1463.)

§ 1103. Contracts for medical and dental care: State and local preemption

(a) OCCURRENCE OF PREEMPTION.—A law or regulation of a State or local government relating to health insurance, prepaid health plans, or other health care delivery or financing methods shall not apply to any contract entered into pursuant to this chapter by the Secretary of Defense or the administering Secretaries to the extent that the Secretary of Defense or the administering Secretaries determine that—

(1) the State or local law or regulation is inconsistent with a specific provision of the contract or a regulation promulgated by the Secretary of Defense or the administering Secretaries pursuant to this chapter; or

(2) the preemption of the State or local law or regulation is necessary to implement or administer the provisions of the contract or to achieve any other important Federal interest.

(b) EFFECT OF PREEMPTION.—In the case of the preemption under subsection (a) of a State or local law or regulation regarding financial solvency, the Secretary of Defense or the administering Secretaries shall require an independent audit of the prime contractor of each contract that is entered into pursuant to this chapter and covered by the preemption. The audit shall be performed by the Defense Contract Audit Agency.

(c) STATE DEFINED.—In this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and each Territory and possession of the United States.

(Added P.L. 100–180, § 725(a)(1), Dec. 4, 1987, 101 Stat. 1116; revised in its entirety P.L. 103–160, § 715(a), Nov. 30, 1993, 107 Stat. 1690.)

§ 1104. Sharing of health-care resources with the Department of Veterans Affairs

(a) SHARING OF HEALTH-CARE RESOURCES.—Health-care resources of the Department of Defense may be shared with health-

care resources of the Department of Veterans Affairs in accordance with section 8111 of title 38 or under section 1535 of title 31.

(b) REIMBURSEMENT FROM CHAMPUS FUNDS.—Pursuant to an agreement entered into under section 8111 of title 38 or section 1535 of title 31, the Secretary of a military department may reimburse the Secretary of Veterans Affairs from funds available for that military department for the payment of medical care provided under section 1079 or 1086 of this title.

(c) CHARGES.—The Secretary of Defense may prescribe by regulation a premium, deductible, copayment, or other charge for health care provided to covered beneficiaries under this chapter pursuant to an agreement entered into by the Secretary of a military department under section 8111 of title 38 or section 1535 of title 31.

(d) PROVISION OF SERVICES DURING WAR OR NATIONAL EMERGENCY.—Members of the armed forces on active duty during and immediately following a period of war, or during and immediately following a national emergency involving the use of the armed forces in armed conflict, may be provided health-care services by the Department of Veterans Affairs in accordance with section 8111A of title 38.

(Added P.L. 101–189, § 772(a), Nov. 29, 1989, 103 Stat. 1477; amended P.L. 102–484, § 1052(14), Oct. 23, 1992, 106 Stat. 2499; P.L. 103–35, § 201(c)(1), May 31, 1993, 107 Stat. 98.)

§ 1105. Specialized treatment facility program

(a) PROGRAM AUTHORIZED.—The Secretary of Defense may conduct a specialized treatment facility program pursuant to regulations prescribed by the Secretary of Defense. The Secretary shall consult with the other administering Secretaries in prescribing regulations for the program and in conducting the program.

(b) FACILITIES AUTHORIZED TO BE USED.—Under the specialized treatment facility program, the Secretary may designate health care facilities of the uniformed services and civilian health care facilities as specialized treatment facilities.

(c) WAIVER OF NONEMERGENCY HEALTH CARE RESTRICTION.—Under the specialized treatment facility program, the Secretary may waive, with regard to the provision of a particular service, the 40-mile radius restriction set forth in section 1079(a)(7) of this title if the Secretary determines that the use of a different geographical area restriction will result in a more cost-effective provision of the service.

(d) CIVILIAN FACILITY SERVICE AREA.—For purposes of the specialized treatment facility program, the service area of a civilian health care facility designated pursuant to subsection (b) shall be comparable in size to the service areas of facilities of the uniformed services.

(e) ISSUANCE OF NONAVAILABILITY OF HEALTH CARE STATEMENTS.—A covered beneficiary who resides within the service area of a specialized treatment facility designated under the specialized treatment facility program may be required to obtain a nonavailability of health care statement in the case of a specialized service offered by the facility in order for the covered beneficiary to receive the service outside of the program.

(f) PAYMENT OF COSTS RELATED TO CARE IN SPECIALIZED TREATMENT FACILITIES.—(1) Subject to paragraph (2), in connection

with the treatment of a covered beneficiary under the specialized treatment facility program, the Secretary may provide the following benefits:

(A) Full or partial reimbursement of a member of the uniformed services for the reasonable expenses incurred by the member in transporting a covered beneficiary to or from a health care facility of the uniformed services or a civilian health care facility at which specialized health care services are provided pursuant to this chapter.

(B) Full or partial reimbursement of a person (including a member of the uniformed services) for the reasonable expenses of transportation, temporary lodging, and meals (not to exceed a per diem rate determined in accordance with implementing regulations) incurred by such person in accompanying a covered beneficiary as a nonmedical attendant to a health care facility referred to in subparagraph (A).

(C) In-kind transportation, lodging, or meals instead of reimbursements under subparagraph (A) or (B) for transportation, lodging, or meals, respectively.

(2) The Secretary may make reimbursements for or provide transportation, lodging, and meals under paragraph (1) in the case of a covered beneficiary only if the total cost to the Department of Defense of doing so and of providing the health care in such case is less than the cost to the Department of providing the health care to the covered beneficiary by other means authorized under this chapter.

(g) COVERED BENEFICIARY DEFINED.—In this section, the term "covered beneficiary" means a person covered under section 1079 or 1086 of this title.

(Added P.L. 102–190, § 715(a), Dec. 5, 1991, 105 Stat. 1403; revised in its entirety P.L. 103–160, § 716(a)(1), Nov. 30, 1993, 107 Stat. 1690; P.L. 104–106, § 706, Feb. 10, 1996, 110 Stat. 373.)

§ 1106. Submittal of claims: standard form; time limits

(a) STANDARD FORM.—The Secretary of Defense, after consultation with the other administering Secretaries, shall prescribe by regulation a standard form for the submission of claims for the payment of health care services provided under this chapter.

(b) TIME FOR SUBMISSION.—A claim for payment for services provided under this chapter shall be submitted as provided in such regulations not later than one year after the services are provided.

(Added P.L. 102–190, § 716(a)(1), Dec. 5, 1991, 105 Stat. 1403; revised in its entirety P.L. 105–85, § 738(a), Nov. 18, 1997, 111 Stat. 1815.)

§ 1107. Notice of use of an investigational new drug or a drug unapproved for its applied use

(a) NOTICE REQUIRED.—(1) Whenever the Secretary of Defense requests or requires a member of the armed forces to receive an investigational new drug or a drug unapproved for its applied use, the Secretary shall provide the member with notice containing the information specified in subsection (d).

(2) The Secretary shall also ensure that health care providers who administer an investigational new drug or a drug unapproved for its applied use, or who are likely to treat members who receive

such a drug, receive the information required to be provided under paragraphs (3) and (4) of subsection (d).

(b) TIME OF NOTICE.—The notice required to be provided to a member under subsection (a)(1) shall be provided before the investigational new drug or drug unapproved for its applied use is first administered to the member.

(c) FORM OF NOTICE.—The notice required under subsection (a)(1) shall be provided in writing.

(d) CONTENT OF NOTICE.—The notice required under subsection (a)(1) shall include the following:

(1) Clear notice that the drug being administered is an investigational new drug or a drug unapproved for its applied use.

(2) The reasons why the investigational new drug or drug unapproved for its applied use is being administered.

(3) Information regarding the possible side effects of the investigational new drug or drug unapproved for its applied use, including any known side effects possible as a result of the interaction of such drug with other drugs or treatments being administered to the members receiving such drug.

(4) Such other information that, as a condition of authorizing the use of the investigational new drug or drug unapproved for its applied use, the Secretary of Health and Human Services may require to be disclosed.

(e) RECORDS OF USE.—The Secretary of Defense shall ensure that the medical records of members accurately document—

(1) the receipt by members of any investigational new drug or drug unapproved for its applied use; and

(2) the notice required by subsection (a)(1).

(f) LIMITATION AND WAIVER [12].—(1) In the case of the administration of an investigational new drug or a drug unapproved for its applied use to a member of the armed forces in connection with the member's participation in a particular military operation, the requirement that the member provide prior consent to receive the drug in accordance with the prior consent requirement imposed under section 505(i)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)(4)) may be waived only by the President. The

[12] Paragraphs (2) and (3) of section 731(a) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (P.L. 105–261; 112 Stat. 2071) provide:

(2) Subsection (f) of section 1107 of title 10, United States Code (as added by paragraph (1)), shall apply to the administration of an investigational new drug or a drug unapproved for its applied use to a member of the Armed Forces in connection with the member's participation in a particular military operation on or after [Oct. 17, 1998].

(3) A waiver of the requirement for prior consent imposed under the regulations required under paragraph (4) of section 505(i) of the Federal Food, Drug, and Cosmetic Act (or under any antecedent provision of law or regulations) that has been granted under that section (or antecedent provision of law or regulations) before [Oct. 17, 1998,] for the administration of a drug to a member of the Armed Forces in connection with the member's participation in a particular military operation may be applied in that case after that date only if—

(A) the Secretary of Defense personally determines that the waiver is justifiable on each ground on which the waiver was granted;

(B) the President concurs in that determination in writing; and

(C) the Secretary submits to the chairman and ranking minority member of each congressional committee referred to in section 1107(f)(4)(C) of title 10, United States Code (as added by paragraph (1))—

(i) a notification of the waiver;

(ii) the President's written concurrence; and

(iii) the Secretary's justification for the request or for the requirement under subsection 1107(a) of such title for the member to receive the drug covered by the waiver.

President may grant such a waiver only if the President determines, in writing, that obtaining consent—

(A) is not feasible;

(B) is contrary to the best interests of the member; or

(C) is not in the interests of national security.

(2) In making a determination to waive the prior consent requirement on a ground described in subparagraph (A) or (B) of paragraph (1), the President shall apply the standards and criteria that are set forth in the relevant FDA regulations for a waiver of the prior consent requirement on that ground.

(3) The Secretary of Defense may request the President to waive the prior consent requirement with respect to the administration of an investigational new drug or a drug unapproved for its applied use to a member of the armed forces in connection with the member's participation in a particular military operation. With respect to any such administration—

(A) the Secretary may not delegate to any other official the authority to request the President to waive the prior consent requirement for the Department of Defense; and

(B) if the President grants the requested waiver, the Secretary shall submit to the chairman and ranking minority member of each congressional defense committee a notification of the waiver, together with the written determination of the President under paragraph (1) and the Secretary's justification for the request or requirement under subsection (a) for the member to receive the drug covered by the waiver.

(4) In this subsection:

(A) The term "relevant FDA regulations" means the regulations promulgated under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)).

(B) The term "prior consent requirement" means the requirement included in the relevant FDA regulations pursuant to section 505(i)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)(4)).

'(C) The term "congressional defense committee" means each of the following:

(i) The Committee on Armed Services and the Committee on Appropriations of the Senate.

(ii) The Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(g) DEFINITIONS.—In this section:

(1) The term "investigational new drug" means a drug covered by section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)).

(2) The term "drug unapproved for its applied use" means a drug administered for a use not described in the approved labeling of the drug under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355).

(Added P.L. 105–85, § 766, Nov. 18, 1997, 111 Stat. 1827; amended P.L. 105–261, § 731(a)(1), (b), Oct. 17, 1998, 112 Stat. 2070, 2071; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 1108. Health care coverage through Federal Employees Health Benefits program: demonstration project

(a) FEHBP OPTION DEMONSTRATION.—The Secretary of Defense, after consulting with the other administering Secretaries, shall enter into an agreement with the Office of Personnel Management to conduct a demonstration project (in this section referred to as the "demonstration project") under which eligible beneficiaries described in subsection (b) and residing within one of the areas covered by the demonstration project may enroll in health benefits plans offered through the Federal Employees Health Benefits program under chapter 89 of title 5. The number of eligible beneficiaries and family members of such beneficiaries under subsection (b)(2) who may be enrolled in health benefits plans during the enrollment period under subsection (d)(2) may not exceed 66,000.

(b) ELIGIBLE BENEFICIARIES; COVERAGE.—(1) An eligible beneficiary under this subsection is—

(A) a member or former member of the uniformed services described in section 1074(b) of this title who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.);

(B) an individual who is an unremarried former spouse of a member or former member described in section 1072(2)(F) or 1072(2)(G));

(C) an individual who is—

(i) a dependent of a deceased member or former member described in section 1076(b) or 1076(a)(2)(B) of this title or of a member who died while on active duty for a period of more than 30 days; and

(ii) a member of family as defined in section 8901(5) of title 5; or

(D) an individual who is—

(i) a dependent of a living member or former member described in section 1076(b)(1) of this title who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act, regardless of the member's or former member's eligibility for such hospital insurance benefits; and

(ii) a member of family as defined in section 8901(5) of title 5.

(2) Eligible beneficiaries may enroll in a Federal Employees Health Benefit plan under chapter 89 of title 5 under this section for self-only coverage or for self and family coverage which includes any dependent of the member or former member who is a family member for purposes of such chapter.

(3) A person eligible for coverage under this subsection shall not be required to satisfy any eligibility criteria specified in chapter 89 of title 5 (except as provided in paragraph (1)(C) or (1)(D)) as a condition for enrollment in health benefits plans offered through the Federal Employees Health Benefits program under the demonstration project.

(4) For purposes of determining whether an individual is a member of family under paragraph (5) of section 8901 of title 5 for purposes of paragraph (1)(C) or (1)(D), a member or former member

described in section 1076(b) or 1076(a)(2)(B) of this title shall be deemed to be an employee under such section.

(5) An eligible beneficiary who is eligible to enroll in the Federal Employees Health Benefits program as an employee under chapter 89 of title 5 is not eligible to enroll in a Federal Employees Health Benefits plan under this section.

(c) AREA OF DEMONSTRATION PROJECT.—The Secretary of Defense and the Director of the Office of Personnel Management shall jointly identify and select the geographic areas in which the demonstration project will be conducted. The Secretary and the Director shall establish at least six, but not more than ten, such demonstration areas. In establishing the areas, the Secretary and Director shall include—

(1) an area that includes the catchment area of one or more military medical treatment facilities;

(2) an area that is not located in the catchment area of a military medical treatment facility;

(3) an area in which there is a Medicare Subvention Demonstration project area under section 1896 of title XVIII of the Social Security Act (42 U.S.C. 1395ggg); and

(4) not more than one area for each TRICARE region.

(d) DURATION OF DEMONSTRATION PROJECT.—(1) The Secretary of Defense shall conduct the demonstration project during three contract years under the Federal Employees Health Benefits program.

(2) Eligible beneficiaries shall, as provided under the agreement pursuant to subsection (a), be permitted to enroll in the demonstration project during an open enrollment period for the year 2000 (conducted in the fall of 1999). The demonstration project shall terminate on December 31, 2002.

(e) PROHIBITION AGAINST USE OF MTFS AND ENROLLMENT UNDER TRICARE.—Covered beneficiaries under this chapter who are provided coverage under the demonstration project shall not be eligible to receive care at a military medical treatment facility or to enroll in a heath care plan under the TRICARE program.

(f) TERM OF ENROLLMENT IN PROJECT.—(1) Subject to paragraphs (2) and (3), the period of enrollment of an eligible beneficiary who enrolls in the demonstration project during the open enrollment period for the year 2000 shall be three years unless the beneficiary disenrolls before the termination of the project.

(2) A beneficiary who elects to enroll in the project, and who subsequently discontinues enrollment in the project before the end of the period described in paragraph (1), shall not be eligible to reenroll in the project.

(3) An eligible beneficiary enrolled in a Federal Employees Health Benefits plan under this section may change health benefits plans and coverage in the same manner as any other Federal Employees Health Benefits program beneficiary may change such plans.

(g) EFFECT OF CANCELLATION.—The cancellation by an eligible beneficiary of coverage under the Federal Employee Health Benefits program shall be irrevocable during the term of the demonstration project.

(h) SEPARATE RISK POOLS; CHARGES.—(1) The Director of the Office of Personnel Management shall require health benefits plans under chapter 89 of title 5 that participate in the demonstration project to maintain a separate risk pool for purposes of establishing premium rates for eligible beneficiaries who enroll in such a plan in accordance with this section.

(2) The Director shall determine total subscription charges for self only or for family coverage for eligible beneficiaries who enroll in a health benefits plan under chapter 89 of title 5 in accordance with this section. The subscription charges shall include premium charges paid to the plan and amounts described in section 8906(c) of title 5 for administrative expenses and contingency reserves.

(i) GOVERNMENT CONTRIBUTIONS.—The Secretary of Defense shall be responsible for the Government contribution for an eligible beneficiary who enrolls in a health benefits plan under chapter 89 of title 5 in accordance with this section, except that the amount of the contribution may not exceed the amount of the Government contribution which would be payable if the electing beneficiary were an employee (as defined for purposes of such chapter) enrolled in the same health benefits plan and level of benefits.

(j) REPORT REQUIREMENTS.—(1) The Secretary of Defense and the Director of the Office of Personnel Management shall jointly submit to Congress two reports containing the information described in paragraph (2). The first report shall be submitted not later than the date that is 15 months after the date that the Secretary begins to implement the demonstration project. The second report shall be submitted not later than December 31, 2002.

(2) The reports required by paragraph (1) shall include the following:

(A) Information on the number of eligible beneficiaries who elect to participate in the demonstration project.

(B) An analysis of the percentage of eligible beneficiaries who participate in the demonstration project as compared to the percentage of covered beneficiaries under this chapter who elect to enroll in a health care plan under such chapter.

(C) Information on eligible beneficiaries who elect to participate in the demonstration project and did not have Medicare Part B coverage before electing to participate in the project.

(D) An analysis of the enrollment rates and cost of health services provided to eligible beneficiaries who elect to participate in the demonstration project as compared with similarly situated enrollees in the Federal Employees Health Benefits program under chapter 89 of title 5.

(E) An analysis of how the demonstration project affects the accessibility of health care in military medical treatment facilities, and a description of any unintended effects on the treatment priorities in those facilities in the demonstration area.

(F) An analysis of any problems experienced by the Department of Defense in managing the demonstration project.

(G) A description of the effects of the demonstration project on medical readiness and training of the Armed Forces at military medical treatment facilities located in the demonstration

area, and a description of the probable effects that making the project permanent would have on the medical readiness and training.

(H) An examination of the effects that the demonstration project, if made permanent, would be expected to have on the overall budget of the Department of Defense, the budget of the Office of Personnel Management, and the budgets of individual military medical treatment facilities.

(I) An analysis of whether the demonstration project affects the cost to the Department of Defense of prescription drugs or the accessibility, availability, and cost of such drugs to eligible beneficiaries.

(J) Any additional information that the Secretary of Defense or the Director of the Office of Personnel Management considers appropriate to assist Congress in determining the viability of expanding the project to all Medicare-eligible members of the uniformed services and their dependents.

(K) Recommendations on whether eligible beneficiaries—

(i) should be given more than one chance to enroll in the demonstration project under this section;

(ii) should be eligible to enroll in the project only during the first year following the date that the eligible beneficiary becomes eligible to receive hospital insurance benefits under part A of title XVIII of the Social Security Act; or

(iii) should be eligible to enroll in the project only during the 2-year period following the date on which the beneficiary first becomes eligible to enroll in the project.

(k) COMPTROLLER GENERAL REPORT.—Not later than December 31, 2002, the Comptroller General shall submit to Congress a report addressing the same matters required to be addressed under subsection (j)(2). The report shall describe any limitations with respect to the data contained in the report as a result of the size and design of the demonstration project.

(l) APPLICATION OF MEDIGAP PROTECTIONS TO DEMONSTRATION PROJECT ENROLLEES.—(1) Subject to paragraph (2), the provisions of section 1882(s)(3) (other than clauses (i) through (iv) of subparagraph (B)) and 1882(s)(4) of the Social Security Act shall apply to enrollment (and termination of enrollment) in the demonstration project under this section, in the same manner as they apply to enrollment (and termination of enrollment) with a Medicare+Choice organization in a Medicare+Choice plan.

(2) In applying paragraph (1)—

(A) any reference in clause (v) or (vi) of section 1882(s)(3)(B) of such Act to 12 months is deemed a reference to 36 months; and

(B) the notification required under section 1882(s)(3)(D) of such Act shall be provided in a manner specified by the Secretary of Defense in consultation with the Director of the Office of Personnel Management.

(Added P.L. 105–261, § 721(a), Oct. 17, 1998, 112 Stat. 2061.)

§ 1109. Organ and tissue donor program

(a) RESPONSIBILITIES OF THE SECRETARY OF DEFENSE.—The Secretary of Defense shall ensure that the advanced systems developed for recording armed forces members' personal data and information (such as the SMARTCARD, MEDITAG, and Personal Information Carrier) include the capability to record organ and tissue donation elections.

(b) RESPONSIBILITIES OF THE SECRETARIES OF THE MILITARY DEPARTMENTS.—The Secretaries of the military departments shall ensure that—

(1) appropriate information about organ and tissue donation is provided—

(A) to each officer candidate during initial training; and

(B) to each recruit—

(i) after completion by the recruit of basic training; and

(ii) before arrival of the recruit at the first duty assignment of the recruit;

(2) members of the armed forces are given recurring, specific opportunities to elect to be organ or tissue donors during service in the armed forces and upon retirement; and

(3) members of the armed forces electing to be organ or tissue donors are encouraged to advise their next of kin concerning the donation decision and any subsequent change of that decision.

(c) RESPONSIBILITIES OF THE SURGEONS GENERAL OF THE MILITARY DEPARTMENTS.—The Surgeons General of the military departments shall ensure that—

(1) appropriate training is provided to enlisted and officer medical personnel to facilitate the effective operation of organ and tissue donation activities under garrison conditions and, to the extent possible, under operational conditions; and

(2) medical logistical activities can, to the extent possible without jeopardizing operational requirements, support an effective organ and tissue donation program.

(Added P.L. 105–261, § 741(b), Oct. 17, 1998, 112 Stat. 2073; P.L. 106–398, § 1[1087(a)(8)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290.)

§ 1110. Anthrax vaccine immunization program; procedures for exemptions and monitoring reactions

(a) PROCEDURES FOR MEDICAL AND ADMINISTRATIVE EXEMPTIONS.—(1) The Secretary of Defense shall establish uniform procedures under which members of the armed forces may be exempted from participating in the anthrax vaccine immunization program for either administrative or medical reasons. [13]

(2) The Secretaries of the military departments shall provide for notification of all members of the armed forces of the procedures established pursuant to paragraph (1).

[13] Not later than April 1, 2001, the Secretary of Defense shall establish the uniform procedures for exemption from participation in the anthrax vaccine immunization program of the Department of Defense required under subsection (a), pursuant to section 751(e)(1) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654, 1654A–195).

(b) SYSTEM FOR MONITORING ADVERSE REACTIONS.—(1) The Secretary shall establish a system for monitoring adverse reactions of members of the armed forces to the anthrax vaccine.[14] That system shall include the following:

(A) Independent review of Vaccine Adverse Event Reporting System reports.

(B) Periodic surveys of personnel to whom the vaccine is administered.

(C) A continuing longitudinal study of a pre-identified group of members of the armed forces (including men and women and members from all services).

(D) Active surveillance of a sample of members to whom the anthrax vaccine has been administered that is sufficient to identify, at the earliest opportunity, any patterns of adverse reactions, the discovery of which might be delayed by reliance solely on the Vaccine Adverse Event Reporting System.

(2) The Secretary may extend or expand any ongoing or planned study or analysis of trends in adverse reactions of members of the armed forces to the anthrax vaccine in order to meet any of the requirements in paragraph (1).

(3) The Secretary shall establish guidelines under which members of the armed forces who are determined by an independent expert panel to be experiencing unexplained adverse reactions may obtain access to a Department of Defense Center of Excellence treatment facility for expedited treatment and follow up.[15]

(Added P.L. 106–398, § 1[751(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–193.)

[14] Not later than July 1, 2001, the Secretary of Defense shall establish the system for monitoring adverse reactions of members of the Armed Forces to the anthrax vaccine required under subsection (b)(1), pursuant to section 751(e)(2) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654, 1654A–195).

[15] Not later than April 1, 2001, the Secretary of Defense shall establish the guidelines under which members of the Armed Forces may obtain access to a Department of Defense Center of Excellence treatment facility for expedited treatment and follow up required under subsection (b)(3), pursuant to section 751(e)(3) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654, 1654A–195).

CHAPTER 56—DEPARTMENT OF DEFENSE MEDICARE-ELIGIBLE RETIREE HEALTH CARE FUND

Sec.
1111. Establishment and purpose of Fund; definitions.
1112. Assets of Fund.
1113. Payments from the Fund.
1114. Board of Actuaries.
1115. Determination of contributions to the Fund.
1116. Payments into the Fund.
1117. Investment of assets of Fund.

§ 1111. Establishment and purpose of Fund; definitions

(a) There is established on the books of the Treasury a fund to be known as the Department of Defense Medicare-Eligible Retiree Health Care Fund (hereafter in this chapter referred to as the "Fund"), which shall be administered by the Secretary of the Treasury. The Fund shall be used for the accumulation of funds in order to finance on an actuarially sound basis liabilities of the Department of Defense under Department of Defense retiree health care programs for medicare-eligible beneficiaries.

(b) In this chapter:

(1) The term "Department of Defense retiree health care programs for medicare-eligible beneficiaries" means the provisions of this title or any other provision of law creating entitlement to health care for a medicare-eligible member or former member of the uniformed services entitled to retired or retainer pay, or a medicare-eligible dependent of a member or former member of the uniformed services entitled to retired or retainer pay.

(2) The term "medicare-eligible" means entitled to benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.).

(3) The term "dependent" means a dependent (as such term is defined in section 1072 of this title) described in section 1076(b)(1) of this title.

(Added P.L. 106–398, § 1[713(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–179.)

§ 1112. Assets of Fund

There shall be deposited into the Fund the following, which shall constitute the assets of the Fund:

(1) Amounts paid into the Fund under section 1116 of this title.

(2) Any amount appropriated to the Fund.

(3) Any return on investment of the assets of the Fund.

(Added P.L. 106–398, § 1[713(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–180.)

§ 1113. Payments from the Fund [1]

(a) There shall be paid from the Fund amounts payable for Department of Defense retiree health care programs for medicare-eligible beneficiaries.

(b) The assets of the Fund are hereby made available for payments under subsection (a).

(Added P.L. 106–398, § 1[713(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–180.)

§ 1114. Board of Actuaries

(a)(1) There is established in the Department of Defense a Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries (hereafter in this chapter referred to as the "Board"). The Board shall consist of three members who shall be appointed by the Secretary of Defense from among qualified professional actuaries who are members of the Society of Actuaries.

(2)(A) Except as provided in subparagraph (B), the members of the Board shall serve for a term of 15 years, except that a member of the Board appointed to fill a vacancy occurring before the end of the term for which his predecessor was appointed shall only serve until the end of such term. A member may serve after the end of his term until his successor has taken office. A member of the Board may be removed by the Secretary of Defense for misconduct or failure to perform functions vested in the Board, and for no other reason.

(B) Of the members of the Board who are first appointed under this paragraph, one each shall be appointed for terms ending five, ten, and 15 years, respectively, after the date of appointment, as designated by the Secretary of Defense at the time of appointment.

(3) A member of the Board who is not otherwise an employee of the United States is entitled to receive pay at the daily equivalent of the annual rate of basic pay of the highest rate of basic pay under the General Schedule of subchapter III of chapter 53 of title 5, for each day the member is engaged in the performance of duties vested in the Board, and is entitled to travel expenses, including a per diem allowance, in accordance with section 5703 of title 5.

(b) The Board shall report to the Secretary of Defense annually on the actuarial status of the Fund and shall furnish its advice and opinion on matters referred to it by the Secretary.

(c) The Board shall review valuations of the Fund under section 1115(c) of this title and shall report periodically, not less than once every four years, to the President and Congress on the status of the Fund. The Board shall include in such reports recommendations for such changes as in the Board's judgment are necessary to protect the public interest and maintain the Fund on a sound actuarial basis.

(Added P.L. 106–398, § 1[713(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–180.)

[1] Section 1113 takes effect on October 1, 2002, pursuant to section 713(b)(1) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654A–184).

§ 1115. Determination of contributions to the Fund [2]

(a) The Board shall determine the amount that is the present value (as of October 1, 2002) of future benefits payable from the Fund that are attributable to service in the uniformed services performed before October 1, 2002. That amount is the original unfunded liability of the Fund. The Board shall determine the period of time over which the original unfunded liability should be liquidated and shall determine an amortization schedule for the liquidation of such liability over that period. Contributions to the Fund for the liquidation of the original unfunded liability in accordance with such schedule shall be made as provided in section 1116(b) of this title.

(b)(1) The Secretary of Defense shall determine each year, in sufficient time for inclusion in budget requests for the following fiscal year, the total amount of Department of Defense contributions to be made to the Fund during that fiscal year under section 1116(a) of this title. That amount shall be the sum of the following:

(A) The product of—

(i) the current estimate of the value of the single level dollar amount to be determined under subsection (c)(1)(A) at the time of the next actuarial valuation under subsection (c); and

(ii) the expected average force strength during that fiscal year for members of the uniformed services on active duty (other than active duty for training) and full-time National Guard duty (other than full-time National Guard duty for training only).

(B) The product of—

(i) the current estimate of the value of the single level dollar amount to be determined under subsection (c)(1)(B) at the time of the next actuarial valuation under subsection (c); and

(ii) the expected average force strength during that fiscal year for members of the Ready Reserve of the uniformed services (other than members on full-time National Guard duty other than for training) who are not otherwise described in subparagraph (A)(ii).

(2) The amount determined under paragraph (1) for any fiscal year is the amount needed to be appropriated to the Department of Defense for that fiscal year for payments to be made to the Fund during that year under section 1116(a) of this title. The President shall include not less than the full amount so determined in the budget transmitted to Congress for that fiscal year under section 1105 of title 31. The President may comment and make recommendations concerning any such amount.

(c)(1) Not less often than every four years, the Secretary of Defense shall carry out an actuarial valuation of the Fund. Each such actuarial valuation shall include—

(A) a determination (using the aggregate entry-age normal cost method) of a single level dollar amount for members of the

[2] Section 1115 takes effect on October 1, 2001, pursuant to section 713(b)(2) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654A–184).

uniformed services on active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only); and

(B) a determination (using the aggregate entry-age normal cost method) of a single level dollar amount for members of the Ready Reserve of the uniformed services and other than members on full-time National Guard duty other than for training) who are not otherwise described by subparagraph (A).

Such single level dollar amounts shall be used for the purposes of subsection (b) and section 1116(a) of this title.

(2) If at the time of any such valuation there has been a change in benefits under the Department of Defense retiree health care programs for medicare-eligible beneficiaries that has been made since the last such valuation and such change in benefits increases or decreases the present value of amounts payable from the Fund, the Secretary of Defense shall determine an amortization methodology and schedule for the amortization of the cumulative unfunded liability (or actuarial gain to the Fund) created by such change and any previous such changes so that the present value of the sum of the amortization payments (or reductions in payments that would otherwise be made) equals the cumulative increase (or decrease) in the present value of such amounts.

(3) If at the time of any such valuation the Secretary of Defense determines that, based upon changes in actuarial assumptions since the last valuation, there has been an actuarial gain or loss to the Fund, the Secretary shall determine an amortization methodology and schedule for the amortization of the cumulative gain or loss to the Fund created by such change in assumptions and any previous such changes in assumptions through an increase or decrease in the payments that would otherwise be made to the Fund.

(4) If at the time of any such valuation the Secretary of Defense determines that, based upon the Fund's actuarial experience (other than resulting from changes in benefits or actuarial assumptions) since the last valuation, there has been an actuarial gain or loss to the Fund, the Secretary shall determine an amortization methodology and schedule for the amortization of the cumulative gain or loss to the Fund created by such actuarial experience and any previous actuarial experience through an increase or decrease in the payments that would otherwise be made to the Fund.

(5) Contributions to the Fund in accordance with amortization schedules under paragraphs (2), (3), and (4) shall be made as provided in section 1116(b) of this title.

(d) All determinations under this section shall be made using methods and assumptions approved by the Board of Actuaries (including assumptions of interest rates and medical inflation) and in accordance with generally accepted actuarial principles and practices.

(e) The Secretary of Defense shall provide for the keeping of such records as are necessary for determining the actuarial status of the Fund.

(Added P.L. 106–398, § 1[713(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–181.)

§ 1116. Payments into the Fund [3]

(a) The Secretary of Defense shall pay into the Fund at the end of each month as the Department of Defense contribution to the Fund for that month the amount that is the sum of the following:

(1) The product of—

(A) the monthly dollar amount determined using all the methods and assumptions approved for the most recent (as of the first day of the current fiscal year) actuarial valuation under section 1115(c)(1)(A) of this title (except that any statutory change in the Department of Defense retiree health care programs for medicare-eligible beneficiaries that is effective after the date of that valuation and on or before the first day of the current fiscal year shall be used in such determination); and

(B) the total end strength for that month for members of the uniformed services on active duty (other than active duty for training) and full-time National Guard duty (other than full-time National Guard duty for training only).

(2) The product of—

(A) the level monthly dollar amount determined using all the methods and assumptions approved for the most recent (as of the first day of the current fiscal year) actuarial valuation under section 1115(c)(1)(B) of this title (except that any statutory change in the Department of Defense retiree health care programs for medicare-eligible beneficiaries that is effective after the date of that valuation and on or before the first day of the current fiscal year shall be used in such determination); and

(B) the total end strength for that month for members of the Ready Reserve of the uniformed services other than members on full-time National Guard duty other than for training) who are not otherwise described in paragraph (1)(B). Amounts paid into the Fund under this subsection shall be paid from funds available for the Defense Health Program.

(b)(1) At the beginning of each fiscal year the Secretary of the Treasury shall promptly pay into the Fund from the General Fund of the Treasury the amount certified to the Secretary by the Secretary of Defense under paragraph (3). Such payment shall be the contribution to the Fund for that fiscal year required by sections 1115(a) and 1115(c) of this title.

(2) At the beginning of each fiscal year the Secretary of Defense shall determine the sum of the following:

(A) The amount of the payment for that year under the amortization schedule determined by the Board of Actuaries under section 1115(a) of this title for the amortization of the original unfunded liability of the Fund.

(B) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1115(c)(2) of this

[3] Section 1116 takes effect on October 1, 2002, pursuant to section 713(b)(1) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654A–184).

title for the amortization of any cumulative unfunded liability (or any gain) to the Fund resulting from changes in benefits.

(C) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1115(c)(3) of this title for the amortization of any cumulative actuarial gain or loss to the Fund resulting from actuarial assumption changes.

(D) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 111(c)(4) of this title for the amortization of any cumulative actuarial gain or loss to the Fund resulting from actuarial experience.

(3) The Secretary of Defense shall promptly certify the amount determined under paragraph (2) each year to the Secretary of the Treasury.

(Added P.L. 106–398, § 1[713(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–182.)

§ 1117. Investment of assets of Fund

The Secretary of the Treasury shall invest such portion of the Fund as is not in the judgment of the Secretary of Defense required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable to the needs of the Fund, as determined by the Secretary of Defense, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to and form a part of the Fund.

(Added P.L. 106–398, § 1[713(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–184.)

CHAPTER 57—DECORATIONS AND AWARDS

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§ 1121. Legion of Merit: award

The President, under regulations to be prescribed by him, may award a decoration called the "Legion of Merit", having suitable appurtenances and devices and not more than four degrees, to any member of the armed forces of the United States or of any friendly foreign nation who, after September 8, 1939, has distinguished himself by exceptionally meritorious conduct in performing outstanding services.

(Aug. 10, 1956, ch. 1041, 70A Stat. 88.)

§ 1122. Medal for Merit: award

The President, under regulations to be prescribed by him, may award a decoration called the "Medal for Merit", having distinctive appurtenances and devices and only one degree, to any civilian of any nation prosecuting the war in existence on July 20, 1942, under the joint declaration of the United Nations, as then constituted, or of any other friendly foreign nation, who, after September 8, 1939, has distinguished himself by exceptionally meritorious conduct in performing outstanding services. The Medal for Merit may be awarded to a civilian of a foreign nation but only for performing an exceptionally meritorious or courageous act in the furtherance of the war efforts of the United Nations as then constituted.

(Aug. 10, 1956, ch. 1041, 70A Stat. 88.)

§ 1123. Right to wear badges of military societies

(a) A member of the Army, Navy, Air Force, or Marine Corps who is a member of a military society originally composed of men who served in an armed force of the United States during the Revolutionary War, the War of 1812, the Mexican War, the Civil War, the Spanish-American War, the Philippine Insurrection, or the Chi-

nese Relief Expedition of 1900 may wear, on occasions of ceremony, the distinctive badges adopted by that society.

(b) A member of the Army, Navy, Air Force, or Marine Corps who is a member of the Army and Navy Union of the United States may wear, on public occasions of ceremony, the distinctive badges adopted by that society.

(Aug. 10, 1956, ch. 1041, 70A Stat. 88.)

§ 1124. Cash awards for disclosures, suggestions, inventions, and scientific achievements

(a) 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, may authorize the payment of a cash award to, and incur necessary expense for the honorary recognition of, a member of the armed forces under his jurisdiction who by his disclosure, suggestion, invention, or scientific achievement contributes to the efficiency, economy, or other improvement of operations or programs relating to the armed forces.

(b) Whenever the President considers it desirable, the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, are authorized to pay a cash award to, and incur necessary expense for the honorary recognition of, a member of the armed forces who by his disclosure, suggestion, invention, or scientific achievement contributes to the efficiency, economy, or other improvement of operations of the Government of the United States. Such award is in addition to any other award made to that member under subsection (a).

(c) An award under this section may be paid notwithstanding the member's death, separation, or retirement from the armed force concerned. However, the disclosure, suggestion, invention, or scientific achievement forming the basis for the award must have been made while the member was on active duty or in an active reserve status and not otherwise eligible for an award under chapter 45 of title 5.

(d) A cash award under this section is in addition to the pay and allowances of the recipient. The acceptance of such an award shall constitute—

(1) an agreement by the member that the use by the United States of any idea, method, or device for which the award is made may not be the basis of a claim against the United States by the member, his heirs, or assigns, or by any person whose claim is alleged to be derived through the member; and

(2) a warranty by the member that he has not at the time of acceptance transferred, assigned, or otherwise divested himself of legal or equitable title in any property right residing in the idea, method, or device for which the award is made.

(e) Awards to, and expenses for the honorary recognition of, members of the armed forces under this section may be paid from (1) the funds or appropriations available to the activity primarily benefiting; or (2) the several funds or appropriations of the various activities benefiting, as may be determined by the President for

awards under subsection (b), and by the Secretary concerned for awards under subsection (a).

(f) The total amount of the award, or awards, made under this section for a disclosure, suggestion, invention, or scientific achievement may not exceed $25,000, regardless of the number of persons who may be entitled to share therein.

(g) Awards under this section shall be made under regulations to be prescribed by the Secretary of Defense, or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(h) For the purposes of this section, a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration or of the Public Health Service who is serving with an armed force shall be treated as if he were a member of that armed force.

(Added P.L. 89–198, § 1(1), Sept. 22, 1965, 79 Stat. 830; amended P.L. 89–718, § 10, Nov. 2, 1966, 80 Stat. 1117; P.L. 90–623, § 2(1), Oct. 22, 1968, 82 Stat. 1314; P.L. 96–470, § 112(c), Oct. 19, 1980, 94 Stat. 2240; P.L. 96–513, § 511(40), Dec. 12, 1980, 94 Stat. 2923; P.L. 96–527, § 772, Dec. 15, 1980, 94 Stat. 3093; P.L. 99–145, § 1225(a), Nov. 8, 1985, 99 Stat. 730.)

§ 1125. Recognition for accomplishments: award of trophies

The Secretary of Defense may—

(1) award medals, trophies, badges, and similar devices to members, units, or agencies of an armed force under his jurisdiction for excellence in accomplishments or competitions related to that armed force; and

(2) provide badges or buttons in recognition of special service, good conduct, and discharge under conditions other than dishonorable.

(Added P.L. 89–529, § 1(1), Aug. 11, 1966, 80 Stat. 339.)

§ 1126. Gold star lapel button: eligibility and distribution

(a) A lapel button, to be known as the gold star lapel button, shall be designed, as approved by the Secretary of Defense, to identify widows, parents, and next of kin of members of the armed forces—

(1) who lost their lives during World War I, World War II, or during any subsequent period of armed hostilities in which the United States was engaged before July 1, 1958;

(2) who lost or lose their lives after June 30, 1958—

(A) while engaged in an action against an enemy of the United States;

(B) while engaged in military operations involving conflict with an opposing foreign force; or

(C) while serving with friendly foreign forces engaged in an armed conflict in which the United States is not a belligerent party against an opposing armed force; or

(3) who lost or lose their lives after March 28, 1973, as a result of—

(A) an international terrorist attack against the United States or a foreign nation friendly to the United States, recognized as such an attack by the Secretary of Defense; or

(B) military operations while serving outside the United States (including the commonwealths, territories,

and possessions of the United States) as part of a peacekeeping force.

(b) Under regulations to be prescribed by the Secretary of Defense, the Secretary concerned, upon application to him, shall furnish one gold star lapel button without cost to the widow and to each parent and next of kin of a member who lost or loses his or her life under any circumstances prescribed in subsection (a).

(c) Not more than one gold star lapel button may be furnished to any one individual except that, when a gold star lapel button furnished under this section has been lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was furnished, the button may be replaced upon application and payment of an amount sufficient to cover the cost of manufacture and distribution.

(d) In this section:

(1) The term "widow" includes widower.

(2) The term "parents" includes mother, father, stepmother, stepfather, mother through adoption, father through adoption, and foster parents who stood in loco parentis.

(3) The term "next of kin" includes only children, brothers, sisters, half brothers, and half sisters.

(4) The term "children" includes stepchildren and children through adoption.

(5) The term "World War I" includes the period from April 6, 1917, to March 3, 1921.

(6) The term "World War II" includes the period from September 8, 1939, to July 25, 1947, at 12 o'clock noon.

(7) The term "military operations" includes those operations involving members of the armed forces assisting in United States Government sponsored training of military personnel of a foreign nation.

(8) The term "peacekeeping force" includes those personnel assigned to a force engaged in a peacekeeping operation authorized by the United Nations Security Council.

(Added as § 1124 P.L. 89–534, § 1(1), Aug. 11, 1966, 80 Stat. 345; redesignated § 1126, P.L. 89–718, § 9, Nov. 2, 1966, 80 Stat. 1117; amended P.L. 98–94, § 1268(8), Sept. 24, 1983, 97 Stat. 706; P.L. 100–26, § 7(k)(5), April 21, 1987, 101 Stat 284; P.L. 103–160, § 1143, Nov. 30, 1993, 107 Stat. 1757.)

§ 1127. Precedence of the award of the Purple Heart

In prescribing regulations establishing the order of precedence of awards and decorations authorized to be displayed on the uniforms of members of the armed forces, the Secretary of the military department concerned shall accord the Purple Heart a position of precedence, in relation to other awards and decorations authorized to be displayed, not lower than that immediately following the bronze star.

(Added P.L. 98–525, § 553, Oct. 19, 1984, 98 Stat. 2532; amended P.L. 99–145, § 533, Nov. 8, 1985, 99 Stat. 634.)

§ 1128. Prisoner-of-war medal: issue

(a) The Secretary concerned shall issue a prisoner-of-war medal to any person who, while serving in any capacity with the armed forces, was taken prisoner and held captive—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force;

(3) while serving with friendly forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party; or

(4) by foreign armed forces that are hostile to the United States, under circumstances which the Secretary concerned finds to have been comparable to those under which persons have generally been held captive by enemy armed forces during periods of armed conflict.

(b) The prisoner-of-war medal shall be of appropriate design, with ribbons and appurtenances.

(c) In prescribing regulations establishing the order of precedence of awards and decorations authorized to be displayed on the uniforms of members of the armed forces, the Secretary concerned shall accord the prisoner-of-war medal a position of precedence, in relation to other awards and decorations authorized to be displayed—

(1) immediately following decorations awarded for individual heroism, meritorious achievement, or meritorious service, and

(2) before any other service medal, campaign medal, or service ribbon authorized to be displayed.

(d) Not more than one prisoner-of-war medal may be issued to a person. However, for each succeeding service that would otherwise justify the issuance of such a medal, the Secretary concerned may issue a suitable device to be worn as the Secretary determines.

(e) For a person to be eligible for issuance of a prisoner-of-war medal, the person's conduct must have been honorable for the period of captivity which serves as the basis for the issuance.

(f) If a person dies before the issuance of a prisoner-of-war medal to which he is entitled, the medal may be issued to the person's representative, as designated by the Secretary concerned.

(g) Under regulations to be prescribed by the Secretary concerned, a prisoner-of-war medal that is lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was issued may be replaced without charge.

(h) The Secretary of Defense shall ensure that regulations prescribed by the Secretaries of the military departments under this section are uniform so far as practicable.

(Added P.L. 99–145, § 532, Nov. 8, 1985, 99 Stat. 633; amended P.L. 101–189, § 516(a), Nov. 29, 1989, 103 Stat. 1441.)

§ 1129. Purple Heart: members killed or wounded in action by friendly fire

(a) For purposes of the award of the Purple Heart, the Secretary concerned shall treat a member of the armed forces described in subsection (b) in the same manner as a member who is killed or wounded in action as the result of an act of an enemy of the United States.

(b) A member described in this subsection is a member who is killed or wounded in action by weapon fire while directly engaged

in armed conflict, other than as the result of an act of an enemy of the United States, unless (in the case of a wound) the wound is the result of willful misconduct of the member.

(c) This section applies to members of the armed forces who are killed or wounded on or after December 7, 1941. In the case of a member killed or wounded as described in subsection (b) on or after December 7, 1941, and before November 30, 1993, the Secretary concerned shall award the Purple Heart under subsection (a) in each case which is known to the Secretary before such date or for which an application is made to the Secretary in such manner as the Secretary requires.

(Added P.L. 103–160, § 1141(a), Nov. 30, 1993, 107 Stat. 1756; amended P.L. 105–85, § 1073(a)(18), Nov. 18, 1997, 111 Stat. 1901.)

§ 1130. Consideration of proposals for decorations not previously submitted in timely fashion: procedures for review and recommendation

(a) Upon request of a Member of Congress, the Secretary concerned shall review a proposal for the award or presentation of a decoration (or the upgrading of a decoration), either for an individual or a unit, that is not otherwise authorized to be presented or awarded due to limitations established by law or policy for timely submission of a recommendation for such award or presentation. Based upon such review, the Secretary shall make a determination as to the merits of approving the award or presentation of the decoration and the other determinations necessary to comply with subsection (b).

(b) Upon making a determination under subsection (a) as to the merits of approving the award or presentation of the decoration, the Secretary concerned shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives and to the requesting member of Congress notice in writing of one of the following:

(1) The award or presentation of the decoration does not warrant approval on the merits.

(2) The award or presentation of the decoration warrants approval and a waiver by law of time restrictions prescribed by law is recommended.

(3) The award or presentation of the decoration warrants approval on the merits and has been approved as an exception to policy.

(4) The award or presentation of the decoration warrants approval on the merits, but a waiver of the time restrictions prescribed by law or policy is not recommended.

A notice under paragraph (1) or (4) shall be accompanied by a statement of the reasons for the decision of the Secretary.

(c) Determinations under this section regarding the award or presentation of a decoration shall be made in accordance with the same procedures that apply to the approval or disapproval of the award or presentation of a decoration when a recommendation for such award or presentation is submitted in a timely manner as prescribed by law or regulation.

(d) In this section:

(1) The term "Member of Congress" means—

(A) a Senator; or

(B) a Representative in, or a Delegate or Resident Commissioner to, Congress.

(2) The term "decoration" means any decoration or award that may be presented or awarded to a member or unit of the armed forces.

(Added P.L. 104–106, § 526(a), Feb. 10, 1996, 110 Stat. 313; amended P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 1131. Purple Heart: limitation to members of the armed forces

The decoration known as the Purple Heart (authorized to be awarded pursuant to Executive Order 11016) may only be awarded to a person who is a member of the armed forces at the time the person is killed or wounded under circumstances otherwise qualifying that person for award of the Purple Heart.

(Added P.L. 105–85, § 571(a)(1), Nov. 18, 1997, 111 Stat. 1756.)

§ 1132. Presentation of decorations: prohibition on entering correctional facilities for presentation to prisoners convicted of serious violent felonies

(a) PROHIBITION.—A member of the armed forces may not enter a Federal, State, local, or foreign correctional facility to present a decoration to a person who is incarcerated due to conviction of a serious violent felony.

(b) DEFINITIONS.—In this section:

(1) The term "decoration" means any decoration or award that may be presented or awarded to a member of the armed forces.

(2) The term "serious violent felony" has the meaning given that term in section 3559(c)(2)(F) of title 18.

(Added P.L. 105–261, § 537(a), Oct. 17, 1998, 112 Stat. 2019.)

§ 1133. Bronze Star: limitation to members receiving imminent danger pay

The decoration known as the "Bronze Star" may only be awarded to a member of the armed forces who is in receipt of special pay under section 310 of title 37 at the time of the events for which the decoration is to be awarded or who receives such pay as a result of those events.

(Added P.L. 106–398, § 1[541(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–114.)

CHAPTER 58—BENEFITS AND SERVICES FOR MEMBERS BEING SEPARATED OR RECENTLY SEPARATED

Sec.
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[1151. Repealed.]
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§ 1141. Involuntary separation defined

A member of the armed forces shall be considered to be involuntarily separated for purposes of this chapter if the member was on active duty or full-time National Guard duty on September 30, 1990, or after November 29, 1993, or, with respect to a member of the Coast Guard, if the member was on active duty in the Coast Guard after September 30, 1994, and—

(1) in the case of a regular officer (other than a retired officer), the officer is involuntarily discharged under other than adverse conditions, as characterized by the Secretary concerned;

(2) in the case of a reserve officer who is on the active-duty list or, if not on the active-duty list, is on full-time active duty (or in the case of a member of the National Guard, full-time National Guard duty) for the purpose of organizing, administering, recruiting, instructing, or training the reserve components, the officer is involuntarily discharged or released from active duty or full-time National Guard (other than a release from active duty or full-time National Guard duty incident to a transfer to retired status) under other than adverse conditions, as characterized by the Secretary concerned;

(3) in the case of a regular enlisted member serving on active duty, the member is (A) denied reenlistment, or (B) involuntarily discharged under other than adverse conditions, as characterized by the Secretary concerned; and

(4) in the case of a reserve enlisted member who is on full-time active duty (or in the case of a member of the National Guard, full-time National Guard duty) for the purpose of organizing, administering, recruiting, instructing, or training

the reserve components, the member (A) is denied reenlistment, or (B) is involuntarily discharged or released from active duty (or full-time National Guard) under other than adverse conditions, as characterized by the Secretary concerned.

(Added P.L. 101–510, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1551; amended P.L. 103–160, § 503, Nov. 30, 1993, 107 Stat. 1645; P.L. 103–337, § 542(a)(1), Oct. 5, 1994, 108 Stat. 2767.)

§ 1142. Preseparation counseling; transmittal of medical records to Department of Veterans Affairs

(a) REQUIREMENT.—(1) As soon as possible before, but in no event later than 90 days before, the date of the discharge or release from active duty of a member of the armed forces, the Secretary concerned shall provide for individual preseparation counseling of the member. A notation of the provision of such counseling with respect to each matter specified in subsection (b), signed by the member, shall be placed in the service record of each member receiving such counseling.

(2) In carrying out this section, the Secretary concerned may use the services available under section 1144 of this title.

(b) MATTERS TO BE COVERED BY COUNSELING.—Counseling under this section shall include the following:

(1) A discussion of the educational assistance benefits to which the member is entitled under the Montgomery GI Bill and other educational assistance programs because of the member's service in the armed forces.

(2) A description (to be developed with the assistance of the Secretary of Veterans Affairs) of the compensation and vocational rehabilitation benefits to which the member may be entitled under laws administered by the Secretary of Veterans Affairs, if the member is being medically separated or is being retired under chapter 61 of this title.

(3) An explanation of the procedures for and advantages of affiliating with the Selected Reserve.

(4) Information concerning Government and private-sector programs for job search and job placement assistance, including the public and community service jobs program carried out under section 1143a of this title, and information regarding the placement programs established under sections 1152 and 1153 of this title and the Troops-to-Teachers Program Act of 1999 (20 U.S.C. 9301 et seq.).

(5) If the member has a spouse, job placement counseling for the spouse.

(6) Information concerning the availability of relocation assistance services and other benefits and services available to persons leaving military service, as provided under section 1144 of this title.

(7) Information concerning the availability of medical and dental coverage following separation from active duty, including the opportunity to elect into the conversion health policy provided under section 1145 of this title.

(8) Counseling (for the member and dependents) on the effect of career change on individuals and their families.

(9) Financial planning assistance.

(10) The creation of a transition plan for the member to attempt to achieve the educational, training, and employment objectives of the member and, if the member has a spouse, the spouse of the member.

(c) TRANSMITTAL OF MEDICAL INFORMATION TO DEPARTMENT OF VETERANS AFFAIRS.—In the case of a member being medically separated or being retired under chapter 61 of this title, the Secretary concerned shall ensure (subject to the consent of the member) that a copy of the member's service medical record (including any results of a Physical Evaluation Board) is transmitted to the Secretary of Veterans Affairs within 60 days of the separation or retirement.

(Added P.L. 101–510, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1552; amended P.L. 102–190, § 1061(a)(5), 105 Stat. 1472; P.L. 102–484, §§ 4401, 4441(b), 4462(b), Oct. 23, 1992, 106 Stat. 2701, 2730, 2740; P.L. 103–35, § 201(i)(1), May 31, 1993, 107 Stat. 100; P.L. 103–160, § 1332(c), Nov. 30, 1993, 107 Stat. 1797; P.L. 106–398, § 1[1087(a)(9)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290.)

§ 1143. Employment assistance [1]

(a) EMPLOYMENT SKILLS VERIFICATION.—The Secretary of Defense and the Secretary of Transportation with respect to the Coast Guard shall provide to members of the armed forces who are discharged or released from active duty a certification or verification of any job skills and experience acquired while on active duty that may have application to employment in the civilian sector. The preceding sentence shall be carried out in conjunction with the Secretary of Labor.

(b) EMPLOYMENT ASSISTANCE CENTERS.—The Secretary of Defense shall establish permanent employment assistance centers at appropriate military installations. The Secretary of Transportation shall establish permanent employment assistance centers at appropriate Coast Guard installations.

(c) INFORMATION TO CIVILIAN ENTITIES.—For the purpose of assisting members covered by subsection (a) and their spouses in locating civilian employment and training opportunities, the Secretary of Defense and the Secretary of Transportation shall establish and implement procedures to release to civilian employers, organizations, State employment agencies, and other appropriate entities the names (and other pertinent information) of such members and their spouses. Such names may be released for such purpose only with the consent of such members and spouses.

(d) EMPLOYMENT PREFERENCE BY NONAPPROPRIATED FUND INSTRUMENTALITIES.—The Secretary of Defense shall take such steps as necessary to provide that members of Army, Navy, Air Force, or Marine Corps who are involuntarily separated, and the dependents of such members, shall be provided a preference in hir-

[1] Section 4461 of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 102–484), as amended (providing for improved coordination of job training and placement programs for members of the armed forces), and section 4466 of that Act, as amended (providing for participation of discharged military personnel in Upward Bound projects to prepare for college), are set out at the end of this chapter.

The Service Members Occupational Conversion and Training Act of 1992, as amended (subtitle G of title XLIV of P.L. 102–484; §§ 4481–4497) (providing additional means by which the Secretary of Defense can manage the drawdown of the Armed Forces and providing additional forms of assistance to members of the Armed Forces who leave military service by reason of the drawdown), is set out at the end of this chapter.

ing by nonappropriated fund instrumentalities of the Department. Such preference shall be administered in the same manner as the preference for military spouses provided under section 1784(a)(2) of this title, except that a preference under that section shall have priority over a preference under this subsection. A person may receive a preference in hiring under this subsection only once. The Secretary of Transportation shall provide the same preference in hiring to involuntarily separated members of the Coast Guard, and the dependents of such members, in Coast Guard nonappropriated fund instrumentalities.

(Added P.L. 101–510, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1553; amended P.L. 103–337, § 542(a)(2), Oct. 5, 1994, 108 Stat. 2767; P.L. 105–85, § 1073(a)(21), Nov. 18, 1997, 111 Stat. 1901.)

§ 1143a. Encouragement of postseparation public and community service [2]

(a) IN GENERAL.—The Secretary of Defense shall implement a program to encourage members and former members of the armed forces to enter into public and community service jobs after discharge or release from active duty.

(b) PERSONNEL REGISTRY.—The Secretary shall maintain a registry of members and former members of the armed forces discharged or released from active duty who request registration for assistance in pursuing public and community service job opportunities. The registry shall include information on the particular job skills, qualifications, and experience of the registered personnel.

(c) REGISTRY OF PUBLIC SERVICE AND COMMUNITY SERVICE ORGANIZATIONS.—The Secretary shall also maintain a registry of public service and community service organizations. The registry shall contain information regarding each organization, including its location, its size, the types of public and community service positions in the organization, points of contact, procedures for applying for such positions, and a description of each such position that is likely to be available. Any such organization may request registration under this subsection and, subject to guidelines prescribed by the Secretary, be registered.

(d) ASSISTANCE TO BE PROVIDED.—(1) The Secretary shall actively attempt to match personnel registered under subsection (b) with public and community service job opportunities and to facilitate job-seeking contacts between such personnel and the employers offering the jobs.

(2) The Secretary shall offer personnel registered under subsection (b) counselling services regarding—

(A) public service and community service organizations; and

(B) procedures and techniques for qualifying for and applying for jobs in such organizations.

(3) The Secretary may provide personnel registered under subsection (b) with access to the interstate job bank program of the United States Employment Service if the Secretary determines that

[2] Section 4463 of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 102–484), as amended (providing for a program of educational leave relating to continuing public and community service for members of the Armed Forces who are eligible under subsection (b) of such section), and section 4464 of that Act (providing for increased early retired pay for members performing certain public or community service), are set out at the end of this chapter.

such program meets the needs of separating members of the armed forces for job placement.

(e) CONSULTATION REQUIREMENT.—In carrying out this section, the Secretary shall consult closely with the Secretary of Labor, the Secretary of Veterans Affairs, the Secretary of Education, the Director of the Office of Personnel Management, appropriate representatives of State and local governments, and appropriate representatives of businesses and nonprofit organizations in the private sector.

(f) DELEGATION.—The Secretary, with the concurrence of the Secretary of Labor, may designate the Secretary of Labor as the executive agent of the Secretary of Defense for carrying out all or part of the responsibilities provided in this section. Such a designation does not relieve the Secretary of Defense from the responsibility for the implementation of the provisions of this section.

(g) DEFINITIONS.—In this section, the term "public service and community service organization" includes the following organizations:

(1) Any organization that provides the following services:

(A) Elementary, secondary, or postsecondary school teaching or administration.

(B) Support of such teaching or school administration.

(C) Law enforcement.

(D) Public health care.

(E) Social services.

(F) Any other public or community service.

(2) Any nonprofit organization that coordinates the provision of services described in paragraph (1).

(h) COAST GUARD.—This section shall apply to the Coast Guard in the same manner and to the same extent as it applies to the Department of Defense. The Secretary of Transportation shall implement the requirements of this section for the Coast Guard.

(Added P.L. 102–484, § 4462(a)(1), Oct. 23, 1992, 106 Stat. 2738; amended P.L. 103–337, § 542(a)(3), Oct. 5, 1994, 108 Stat. 2768.)

§ 1144. Employment assistance, job training assistance, and other transitional services: Department of Labor

(a) IN GENERAL.—(1) The Secretary of Labor, in conjunction with the Secretary of Defense, the Secretary of Transportation, and the Secretary of Veterans Affairs, shall establish and maintain a program to furnish counseling, assistance in identifying employment and training opportunities, help in obtaining such employment and training, and other related information and services to members of the armed forces under the jurisdiction of the Secretary concerned who are being separated from active duty and the spouses of such members. Such services shall be provided to a member during the 180-day period before the member is separated from active duty.

(2) The Secretary of Defense, the Secretary of Transportation, and the Secretary of Veterans Affairs shall cooperate with the Secretary of Labor in establishing and maintaining the program under this section.

(3) The Secretaries referred to in paragraph (1) shall enter into a detailed agreement to carry out this section. The agreement shall

be entered into no later than 60 days after the date of the enactment of this section.

(b) ELEMENTS OF PROGRAM.—In establishing and carrying out a program under this section, the Secretary of Labor shall do the following:

(1) Provide information concerning employment and training assistance, including (A) labor market information, (B) civilian work place requirements and employment opportunities, (C) instruction in resumé preparation, and (D) job analysis techniques, job search techniques, and job interview techniques.

(2) In providing information under paragraph (1), use experience obtained from implementation of the pilot program established under section 408 of Public Law 101–237.

(3) Provide information concerning Federal, State, and local programs, and programs of military and veterans' service organizations, that may be of assistance to such members after separation from the armed forces, including, as appropriate, the information and services to be provided under section 1142 of this title.

(4) Inform such members that the Department of Defense and the Department of Transportation are required under section 1143(a) of this title to provide proper certification or verification of job skills and experience acquired while on active duty that may have application to employment in the civilian sector for use in seeking civilian employment and in obtaining job search skills.

(5) Provide information and other assistance to such members in their efforts to obtain loans and grants from the Small Business Administration and other Federal, State, and local agencies.

(6) Provide information about the geographic areas in which such members will relocate after separation from the armed forces, including, to the degree possible, information about employment opportunities, the labor market, and the cost of living in those areas (including, to the extent practicable, the cost and availability of housing, child care, education, and medical and dental care).

(7) Work with military and veterans' service organizations and other appropriate organizations in promoting and publicizing job fairs for such members.

(8) Provide information regarding the public and community service jobs program carried out under section 1143a of this title.

(c) PARTICIPATION.—The Secretary of Defense and the Secretary of Transportation shall encourage and otherwise promote maximum participation by members of the armed forces eligible for assistance under the program carried out under this section.

(d) USE OF PERSONNEL AND ORGANIZATIONS.—In carrying out the program established under this section, the Secretaries may—

(1) provide, as the case may be, for the use of disabled veterans outreach program specialists, local veterans' employment representatives, and other employment service personnel funded by the Department of Labor to the extent that the Sec-

retary of Labor determines that such use will not significantly interfere with the provision of services or other benefits to eligible veterans and other eligible recipients of such services or benefits;

(2) use military and civilian personnel of the Department of Defense and the Department of Transportation;

(3) use personnel of the Veterans Benefits Administration of the Department of Veterans Affairs and other appropriate personnel of that Department;

(4) use representatives of military and veterans' service organizations;

(5) enter into contracts with public or private entities; and

(6) take other necessary action to develop and furnish the information and services to be provided under this section.

(e) FUNDING.—(1) There is authorized to be appropriated to the Department of Labor to carry out this section $11,000,000 for fiscal year 1993 and $8,000,000 for each of fiscal years 1994 and 1995.

(2) There is authorized to be appropriated to the Department of Veterans Affairs to carry out this section $6,500,000 for each of fiscal years 1993, 1994, and 1995.

(Added P.L. 101–510, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1553; and amended P.L. 102–190, § 1061(a)(6), Dec. 5, 1991, 105 Stat. 1472; P.L. 102–484, §§ 4462(c), 4469, Oct. 23, 1992, 106 Stat. 2740, 2752; P.L. 103–337, § 543(b), Oct. 5, 1994, 108 Stat. 2769.)

§ 1145. Health benefits

(a) TRANSITIONAL HEALTH CARE.—(1) For the applicable time period described in paragraph (2), a member of the armed forces who is involuntarily separated from active duty during the period beginning on October 1, 1990, and ending on December 31, 2001 (and the dependents of the member), shall be entitled to receive—

(A) medical and dental care under section 1076 of this title in the same manner as a dependent described in subsection (a)(2) of such section; and

(B) health benefits contracted under the authority of section 1079(a) of this title and subject to the same rates and conditions as apply to persons covered under that section.

(2) Transitional health care shall be available under subsection (a) for a specified time period beginning on the date on which the member is involuntarily separated as follows:

(A) For members involuntarily separated with less than six years of active service, 60 days.

(B) For members involuntarily separated with six or more years of active service, 120 days.

(b) CONVERSION HEALTH POLICIES.—(1) The Secretary of Defense shall inform each member referred to in subsection (a) before the date of the member's discharge or release from active duty of the availability for purchase by the member of a conversion health policy for the member and the dependents of that member. A conversion health policy offered under this paragraph shall provide coverage for not less than an 18-month period.[3]

[3] Section 4408(c) of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 102–484; 106 Stat. 2712) provides:

Continued

(2) If a member referred to in subsection (a) purchases a conversion health policy during the period applicable to the member (or within a reasonable time after that period as prescribed by the Secretary of Defense), the Secretary shall provide health care, or pay the costs of health care provided, to the member and the dependents of the member—

(A) during the 18-month period beginning on the date on which coverage under the conversion health policy begins; and

(B) for a condition (including pregnancy) that exists on such date and for which care is not provided under the policy solely on the grounds that the condition is a preexisting condition.

(3) The Secretary of Defense may arrange for the provision of health care described in paragraph (2) through a contract with the insurer offering the conversion health policy.

(4) If the Secretary of Defense is unable, within a reasonable time, to enter into a contract with a private insurer to provide the conversion health policy required under paragraph (1) at a rate not to exceed the payment required under section 8905a(d)(1)(A) of title 5 for comparable coverage, the Secretary shall offer such a policy under the Civilian Health and Medical Program of the Uniformed Services. Subject to paragraph (5), a member purchasing a policy from the Secretary shall be required to pay into the Military Health Care Account or other appropriate account an amount equal to the sum of—

(A) the individual and Government contributions which would be required in the case of a person enrolled in a health benefits plan contracted for under section 1079 of this title; and

(B) an amount necessary for administrative expenses, but not to exceed two percent of the amount under subparagraph (A).

(5) The amount paid by a member who purchases a conversion health policy from the Secretary of Defense under paragraph (4) may not exceed the payment required under section 8905a(d)(1)(A) of title 5 for comparable coverage.

(6) In order to reduce premiums required under paragraph (4), the Secretary of Defense may offer a conversion health policy that, with respect to mental health services, offers reduced coverage and increased cost-sharing by the purchaser.

(c) HEALTH CARE FOR CERTAIN SEPARATED MEMBERS NOT OTHERWISE ELIGIBLE.—(1) Consistent with the authority of the Secretary concerned to designate certain classes of persons as eligible to receive health care at a military medical facility, the Secretary concerned should consider authorizing, on an individual basis in cases of hardship, the provision of that care for a member who is separated from the armed forces during the period beginning on October 1, 1990, and ending on December 31, 2001, and is ineli-

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(c) TERMINATION OF APPLICABILITY OF OTHER CONVERSION HEALTH POLICIES.—(1) No person may purchase a conversion health policy under section 1145(b) or 1086a of title 10, United States Code, on or after October 1, 1994. A person covered by such a conversion health policy on that date may cancel that policy and enroll in a health benefits plan under section 1078a of such title.

(2) No person may be covered concurrently by a conversion health policy under section 1145(b) or 1086a of such title and a health benefits plan under section 1078a of such title.

gible for transitional health care under subsection (a) or does not obtain a conversion health policy (or a dependent of the member).

(2) The Secretary concerned shall give special consideration to requests for such care in cases in which the condition for which treatment is required was incurred or aggravated by the member or the dependent before the date of the separation of the member, particularly if the condition is a result of the particular circumstances of the service of the member.

(d) DEFINITION.—In this section, the term "conversion health policy" means a health insurance policy with a private insurer, developed through negotiations between the Secretary of Defense and a private insurer, that is available for purchase by or for the use of a person who is no longer a member of the armed forces or a covered beneficiary.

(e) COAST GUARD.—The provisions of this section shall apply to members of the Coast Guard (and their dependents) involuntarily separated from active duty during the period beginning on October 1, 1994, and ending on December 31, 2001. The Secretary of Transportation shall implement this section for the Coast Guard.

(Added P.L. 101–510, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1555; amended P.L. 102–484, § 4407(a), Oct. 23, 1992, 106 Stat. 2707; P.L. 103–160, § 561(i), Nov. 30, 1993, 107 Stat. 1668; P.L. 103–337, § 542(a)(4), Oct. 5, 1994, 108 Stat. 2768; P.L. 105–261, § 561(h), Oct. 17, 1998, 112 Stat. 2026; P.L. 106–398, § 1[571(h)], Oct. 30, 2000, 114 Stat. 1654, 1654A–134.)

§ 1146. Commissary and exchange benefits

The Secretary of Defense shall prescribe regulations to allow a member of the armed forces who is involuntarily separated from active duty during the period beginning on October 1, 1990, and ending on December 31, 2001, to continue to use commissary and exchange stores during the two-year period beginning on the date of the involuntary separation of the member in the same manner as a member on active duty. The Secretary of Transportation shall implement this provision for Coast Guard members involuntarily separated during the period beginning on October 1, 1994, and ending on December 31, 2001.

(Added P.L. 101–510, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1556; amended P.L. 103–160, § 561(i), Nov. 30, 1993, 107 Stat. 1668; P.L. 103–337, § 542(a)(5), Oct. 5, 1994, 108 Stat. 2768; P.L. 105–261, § 561(i), Oct. 17, 1998, 112 Stat. 2026; P.L. 106–398, § 1[571(i)], Oct. 30, 2000, 114 Stat. 1654, 1654A–135.)

§ 1147. Use of military family housing

(a) TRANSITION FOR INVOLUNTARILY SEPARATED MEMBERS.—(1) The Secretary of a military department may, pursuant to regulations prescribed by the Secretary of Defense, permit individuals who are involuntarily separated during the period beginning on October 1, 1990, and ending on December 31, 2001, to continue for not more than 180 days after the date of such separation to reside (along with other members of the individual's household) in military family housing provided or leased by the Department of Defense to such individual as a member of the armed forces.

(2) The Secretary of Transportation may prescribe regulations to permit members of the Coast Guard who are involuntarily separated during the period beginning on October 1, 1994, and ending on December 31, 2001, to continue for not more than 180 days after the date of such separation to reside (along with others of the

member's household) in military family housing provided or leased by the Coast Guard to the individual as a member of the armed forces.

(b) RENTAL CHARGES.—The Secretary concerned, pursuant to such regulations, shall require a reasonable rental charge for the continued use of military family housing under subsection (a), except that such Secretary may waive all or any portion of such charge in any case of hardship.

(Added P.L. 101–510, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1556; amended P.L. 103–160, § 561(i), Nov. 30, 1993, 107 Stat. 1668; P.L. 103–337, § 542(a)(6), Oct. 5, 1994, 108 Stat. 2768; P.L. 105–261, § 561(j), Oct. 17, 1998, 112 Stat. 2026; P.L. 106–398, § 1[571(j)], Oct. 30, 2000, 114 Stat. 1654, 1654A–135.)

§ 1148. Relocation assistance for personnel overseas

The Secretary of Defense and the Secretary of Transportation shall develop a program specifically to assist members of the armed forces stationed overseas who are preparing for discharge or release from active duty, and the dependents of such members, in readjusting to civilian life. The program shall focus on the special needs and requirements of such members and dependents due to their overseas locations and shall include, to the maximum extent possible, computerized job relocation assistance and job search information.

(Added P.L. 101–510, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1556; amended P.L. 103–337, § 542(a)(7), Oct. 5, 1994, 108 Stat. 2768.)

§ 1149. Excess leave and permissive temporary duty

Under regulations prescribed by the Secretary of Defense or the Secretary of Transportation with respect to the Coast Guard, the Secretary concerned shall grant a member of the armed forces who is to be involuntarily separated such excess leave (for a period not in excess of 30 days), or such permissive temporary duty (for a period not in excess of 10 days), as the member requires in order to facilitate the member's carrying out necessary relocation activities (such as job search and residence search activities), unless to do so would interfere with military missions.

(Added P.L. 101–510, § 502(a)(1), Nov. 5, 1990, 104 Stat. 155; amended P.L. 103–337, § 542(a)(8), Oct. 5, 1994, 108 Stat. 2768.)

§ 1150. Affiliation with Guard and Reserve units: waiver of certain limitations

(a) PREFERENCE FOR CERTAIN PERSONS.—A person who is separated from the armed forces during the period beginning on October 1, 1990, and ending on December 31, 2001, and who applies to become a member of a National Guard or Reserve unit within one year after the date of such separation shall be given preference over other equally qualified applicants for existing or projected vacancies within the unit to which the member applies.

(b) LIMITED WAIVER OF STRENGTH LIMITATIONS.—Under regulations prescribed by the Secretary of Defense, a person covered by subsection (a) who enters a National Guard or Reserve unit pursuant to an application described in such subsection may be retained in that unit for up to three years without regard to reserve-component strength limitations so long as the individual maintains good standing in that unit.

(c) COAST GUARD.—This section shall apply to the Coast Guard in the same manner and to the same extent as it applies to the Department of Defense. The Secretary of Transportation shall prescribe regulations to implement this section for the Coast Guard.

(Added P.L. 101–510, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1557; amended P.L. 102–484, § 514, Oct. 23, 1992, 106 Stat. 2406; P.L. 103–160, § 561(j), Nov. 30, 1993, 107 Stat. 1668; P.L. 103–337, § 542(a)(9), Oct. 5, 1994, 108 Stat. 2768; P.L. 105–261, § 561(p), Oct. 17, 1998, 112 Stat. 2027; P.L. 106–398, § 1[571(o)], Oct. 30, 2000, 114 Stat. 1654, 1654A–135.)

[§ 1151. Repealed. P.L. 106–65, § 1707(a)(1), Oct. 5, 1999, 113 Stat. 823]

§ 1152. Assistance to eligible members and former members to obtain employment with law enforcement agencies

(a) PLACEMENT PROGRAM.—The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard, may enter into an agreement with the Attorney General to establish or participate in a program to assist eligible members and former members of the armed forces to obtain employment as law enforcement officers with eligible law enforcement agencies following the discharge or release of such members or former members from active duty. Eligible law enforcement agencies shall consist of State law enforcement agencies, local law enforcement agencies, and Indian tribes that perform law enforcement functions (as determined by the Secretary of the Interior).

(b) ELIGIBLE MEMBERS.—Any individual who, during the 6-year period beginning on October 1, 1993, is a member of the armed forces and is separated with an honorable discharge or is released from service on active duty characterized as honorable by the Secretary concerned shall be eligible to participate in a program covered by an agreement referred to in subsection (a).

(c) SELECTION.—In the selection of applicants for participation in a program covered by an agreement referred to in subsection (a), preference shall be given to a member or former member who—

(1) is selected for involuntary separation, is approved for separation under section 1174a or 1175 of this title, or retires pursuant to the authority provided in section 4403 of the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992 (division D of Public Law 102–484; 10 U.S.C. 1293 note); and

(2) has a military occupational specialty, training, or experience related to law enforcement (such as service as a member of the military police) or satisfies such other criteria for selection as the Secretary, the Attorney General, or a participating eligible law enforcement agency prescribed in accordance with the agreement.

(d) GRANTS TO FACILITATE EMPLOYMENT.—(1) The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard, may provide funds to the Attorney General for grants under this section to reimburse participating eligible law enforcement agencies for costs, including salary and fringe benefits, of employing members or former members pursuant to a program referred to in subsection (a).

(2) No grant with respect to an eligible member or former member may exceed a total of $50,000.

(3) Any grant with respect to an eligible member or former member shall be disbursed within 5 years after the date of the placement of a member or former member with a participating eligible law enforcement agency.

(4) Preference in awarding grants through existing law enforcement hiring programs shall be given to State or local law enforcement agencies or Indian tribes that agree to hire eligible members and former members.

(e) ADMINISTRATIVE EXPENSES.—Ten percent of the amount, if any, appropriated for a fiscal year to carry out the program established pursuant to subsection (a) may be used to administer the program.

(f) REQUIREMENT FOR APPROPRIATION.—No person may be selected to participate in the program established pursuant to subsection (a) unless a sufficient amount of appropriated funds is available at the time of the selection to satisfy the obligations to be incurred by the United States under an agreement referred to in subsection (a) that applies with respect to the person.

(g) AUTHORITY TO EXPAND PLACEMENT TO INCLUDE FIREFIGHTERS.—(1) The Secretary may expand the placement activities authorized by subsection (a) to include the placement of eligible members and former members and eligible civilian employees of the Department of Defense as firefighters or members of rescue squads or ambulance crews with public fire departments.

(2) The expansion authorized by this subsection may be made through a program covered by an agreement referred to in subsection (a), if feasible, or in such other manner as the Secretary considers appropriate.

(3) A civilian employee of the Department of Defense shall be eligible to participate in the expanded placement activities authorized under this subsection if the employee, during the six-year period beginning October 1, 1993, is terminated from such employment as a result of reductions in defense spending or the closure or realignment of a military installation, as determined by the Secretary of Defense.

(Added P.L. 103–160, § 1332(a), Nov. 30, 1993, 107 Stat. 1793; amended P.L. 103–337, §§ 543(d), 1132(a), Oct. 5, 1994, 108 Stat. 2771, 2872; P.L. 104–106, § 1503(a)(11), Feb. 10, 1996, 110 Stat. 511; P.L. 104–201, § 575, Sept. 23, 1996, 110 Stat. 2535; P.L. 105–85, § 1073(a)(20), Nov. 18, 1997, 111 Stat. 1901.)

§ 1153. Assistance to separated members to obtain employment with health care providers

(a) PLACEMENT PROGRAM.—The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard, may establish a program to assist eligible members of the armed forces to obtain employment with health care providers upon their discharge or release from active duty.

(b) ELIGIBLE MEMBERS.—(1) Except as provided in paragraph (2), a member shall be eligible for selection to participate in the program established under subsection (a) if the member—

(A) is selected for involuntary separation, is approved for separation under section 1174a or 1175 of this title, or retires pursuant to the authority provided in section 4403 of the De-

fense Conversion, Reinvestment, and Transition Assistance Act of 1992 (division D of Public Law 102–484; 10 U.S.C. 1293 note) during the six-year period beginning on October 1, 1993;

(B) has received an associate degree, baccalaureate, or advanced degree from an accredited institution of higher education or a junior or community college; and

(C) has a military occupational specialty, training, or experience related to health care, is likely to be able to obtain such training in a short period of time (as determined by the Secretary concerned), or satisfies such other criteria for selection as the Secretary concerned may prescribe.

(2) For purposes of this section, a former member of the armed forces who did not meet the minimum educational qualification criterion set forth in paragraph (1)(B) for placement assistance before discharge or release from active duty shall be considered to be a member satisfying such educational qualification criterion upon satisfying that criterion within five years after discharge or release from active duty.

(3) A member who is discharged or released from service under other than honorable conditions shall not be eligible to participate in the program.

(c) SELECTION OF PARTICIPANTS.—(1) The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard, shall select members to participate in the program established under subsection (a) on the basis of applications submitted to the Secretary concerned not later than one year after the date of the discharge or release of the members from active duty or, in the case of an applicant becoming educationally qualified for teacher placement assistance in accordance with subsection (b)(2), not later than one year after the date on which the applicant becomes educationally qualified. An application shall be in such form and contain such information as the Secretaries may require.

(2) The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard, may not select a member to participate in the program unless the Secretary concerned has sufficient appropriations for the placement program available at the time of the selection to satisfy the obligations to be incurred by the United States under subsection (d) with respect to that member.

(3)(A) The Secretaries shall provide under the program for identifying, during each fiscal year in the period referred to in subsection (b)(1)(A), noncommissioned officers who, on or before the end of such fiscal year, will have completed 10 or more years of continuous active duty, who have the potential to perform competently in employment positions with health care providers, but who do not satisfy the minimum educational qualification criterion under subsection (b)(1)(B) for placement assistance.

(B) The Secretaries shall inform noncommissioned officers identified under subparagraph (A) of the opportunity to qualify in accordance with subsection (b)(2) for placement assistance under the program.

(d) GRANTS TO FACILITATE EMPLOYMENT.—(1) The Secretary of Defense and the Secretary of Transportation may enter into an agreement with a health care provider to assist eligible members

selected under subsection (c) to obtain suitable employment with the health care provider. Under such an agreement, a health care provider shall agree to employ a participant in the program on a full-time basis for at least five years.

(2) Under an agreement referred to in paragraph (1), the Secretary concerned shall agree to pay to the health care provider involved an amount based upon the basic salary paid by the health care provider to the participant. The rate of payment by the Secretary concerned shall be as follows:

(A) For the first year of employment, 50 percent of the basic salary, except that the payment may not exceed $25,000.

(B) For the second year of employment, 40 percent of the basic salary, except that the payment may not exceed $10,000.

(C) For the third year of employment, 30 percent of the basic salary, except that the payment may not exceed $7,500.

(D) For the fourth year of employment, 20 percent of the basic salary, except that the payment may not exceed $5,000.

(E) For the fifth year of employment, 10 percent of the basic salary, except that the payment may not exceed $2,500.

(3) Payments required under paragraph (2) may be made by the Secretary concerned in such installments as the Secretary concerned may determine.

(4) If a participant who is placed under this program leaves the employment of the health care provider before the end of the five years of required employment service, the provider shall reimburse the Secretary concerned in an amount that bears the same ratio to the total amount already paid under the agreement as the unserved portion bears to the five years of required service.

(5) The Secretary concerned may not make a grant under this subsection to a health care provider if the Secretary concerned determines that the provider terminated the employment of another employee in order to fill the vacancy so created with a participant in this program.

(e) AGREEMENTS WITH STATES.—(1) In addition to the agreements referred to in subsection (d)(1), the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard, may enter into an agreement directly with a State to allow the State to arrange the placement of participants in the program with health care providers. Paragraphs (2) through (5) of subsection (d) shall apply with respect to any placement made through such an agreement.

(2) The Secretary concerned may reserve up to 10 percent of the funds made available to carry out the program for a fiscal year for the placement of participants through agreements entered into under paragraph (1).

(f) DEFINITIONS.—In this section, the term "State" includes the District of Columbia, American Samoa, the Federated States of Micronesia, Guam, the Republic of the Marshall Islands, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Palau, and the Virgin Islands.

(Added P.L. 103–160, § 1332(b), Nov. 30, 1993, 107 Stat. 1795; amended P.L. 103–337, § 543(e), Oct. 5, 1994, 108 Stat. 2771.)

Certain military personnel transition initiatives in effect during the force reduction transition period beginning on October 1, 1991, and ending on December 31, 2001, under subtitles F and G of title XLIV of the Defense Conversion, Reinvestment, and Transition Act of 1992 (div. D of P.L. 102–484), as amended, are as follows:

TITLE XLIV—PERSONNEL ADJUSTMENT, EDUCATION, AND TRAINING PROGRAMS

* * * * * * *

Subtitle F—Job Training and Employment and Educational Opportunities

SEC. 4461. IMPROVED COORDINATION OF JOB TRAINING AND PLACEMENT PROGRAMS FOR MEMBERS OF THE ARMED FORCES.

The Secretary of Defense shall consult with the Secretary of Labor, the Secretary of Education, the Secretary of Veterans Affairs, and the Economic Adjustment Committee to improve the coordination of, and eliminate duplication between, the following job training and placement programs available to members of the Armed Forces who are discharged or released from active duty:

(1) Title I of the Workforce Investment Act of 1998.

(2) Sections 1143 and 1144 of title 10, United States Code.

(3) Chapter 41 of title 38, United States Code.

(4) The Act of August 16, 1937 (Chapter 663; 50 Stat 664; 29 U.S.C. 50 et seq.), commonly known as the National Apprenticeship Act.

(5) The Wagner-Peyser Act (29 U.S.C. 49 et seq.)

SEC. 4462. [added § 1143a to title 10]

SEC. 4463. PROGRAM OF EDUCATIONAL LEAVE RELATING TO CONTINUING PUBLIC AND COMMUNITY SERVICE.

(a) PROGRAM.—Under regulations prescribed by the Secretary of Defense after consultation with the Secretary of Transportation and subject to subsections (b) and (c), the Secretary concerned may grant to an eligible member of the Armed Forces a leave of absence for a period not to exceed one year for the purpose of permitting the member to pursue a program of education or training (including an internship) for the development of skills that are relevant to the performance of public and community service. A program of education or training referred to in the preceding sentence includes any such program that is offered by the Department of Defense or by any civilian educational or training institution.

(b) ELIGIBILITY REQUIREMENT.—(1) A member may not be granted a leave of absence under this section unless the member agrees in writing—

(A) diligently to pursue employment in public service and community service organizations upon the separation of the member from active duty in the Armed Forces; and

(B) to serve in the Ready Reserve of an armed force, upon such separation, for a period of 4 months for each month of the period of the leave of absence.

(2)(A) A member may not be granted a leave of absence under this section until the member has completed any period of extension of enlistment or reenlistment, or any period of obligated active duty service, that the member has incurred under section 708 of title 10, United States Code.

(B) The Secretary concerned may waive the limitation in subparagraph (A) for a member who enters into an agreement with the Secretary for the member to serve in the Ready Reserve of a reserve component for a period equal to the uncompleted portion of the member's period of service referred to in that subparagraph. Any such period of agreed service in the Ready Reserve shall be in addition to any other period that the member is obligated to serve in a reserve component.

(c) TREATMENT OF LEAVE OF ABSENCE.—A leave of absence under this section shall be subject to the provisions of subsections (c) and (d) of section 708 of title 10, United States Code.

(d) EXCLUSION FROM END STRENGTH LIMITATION.—A member of the Armed Forces, while on leave granted pursuant to this section, may not be counted for purposes of any provision of law that limits the active duty strength of the member's armed force.

(e) DEFINITIONS.—In this section:

(1) The term "Secretary concerned" has the meaning given such term in section 101 of title 10, United States Code.

(2) The term "eligible member of the Armed Forces" means a member of the Armed Forces who is eligible for an educational leave of absence under section 708(e) of such title.

(3) The term "public service and community service organization" has the meaning given such term in section 1143a of such title (as added by section 531(a)).

(f) EXPIRATION.—The authority to grant a leave of absence under subsection (a) shall expire on December 31, 2001.

SEC. 4464. INCREASED EARLY RETIREMENT RETIRED PAY FOR PUBLIC OR COMMUNITY SERVICE.

(a) RECOMPUTATION OF RETIRED PAY.—(1) If a member or former member of the Armed Forces retired under section 4403(a) or any other provision of law authorizing retirement from the Armed Forces (other than for disability) before the completion of at least 20 years of active duty service (as computed under the applicable provision of law) is employed by a public service or community service organization listed on the registry maintained under section 1143a(c) of title 10, United States Code (as added by section 4462(a)), within the period of the member's enhanced retirement qualification period, the member's or former member's retired or retainer pay shall be recomputed effective on the first day of the first month beginning after the date on which the member or former member attains 62 years of age.

(2) For purposes of recomputing a member's or former member's retired pay—

(A) the years of the member's or former member's employment by a public service or community service organization referred to in paragraph (1) during the member's or former member's enhanced retirement qualification period shall be treated as years of active duty service in the Armed Forces; and

(B) in applying section 1401a of title 10, United States Code, the member's or former member's years of active duty service shall be deemed as of the date of retirement to have included the years of employment referred to in subparagraph (A).

(3) Section 1405(b) of title 10, United States Code, shall apply in determining years of service under this subsection.

(4) In this subsection, the term "enhanced retirement qualification period", with respect to a member or former member retired under a provision of law referred to in paragraph (1), means the period beginning on the date of the retirement of the member or former member and ending the number of years (including any fraction of a year) after that date which when added to the number of years (including any fraction of a year) of service credited for purposes of computing the retired pay of the member or former member upon retirement equals 20 years.

(b) SBP ANNUITIES.—(1) Effective on the first day of the first month after a member or former member of the Armed Forces retired under a provision of law referred to in subsection (a)(1) attains 62 years of age or, in the event of death before attaining that age, would have attained that age, the base amount applicable under section 1447(2) of title 10, United States Code, to any Survivor Benefit Plan annuity provided by that member or former member shall be recomputed. For the recomputation the total years (including any fraction of a year) of the member's or former member's active service shall be treated as having included the member's or former member's years (including any fraction of a year) of employment referred to in subsection (a)(1) as of the date when the member or former member became eligible for retired pay under this section.

(2) In this subsection, the term "Survivor Benefit Plan" means the plan established under subchapter II of chapter 73 of title 10, United States Code.

SEC. 4465. TRAINING, ADJUSTMENT ASSISTANCE, AND EMPLOYMENT SERVICES FOR DISCHARGED MILITARY PERSONNEL, TERMINATED DEFENSE EMPLOYEES, AND DISPLACED EMPLOYEES OF DEFENSE CONTRACTORS.

[added § 325A (29 U.S.C. 1662d–1) to the Job Training Partnership Act.]

SEC. 4466. PARTICIPATION OF DISCHARGED MILITARY PERSONNEL IN UPWARD BOUND PROJECTS TO PREPARE FOR COLLEGE.

(a) PROGRAM.—The Secretary of Defense may carry out a program to assist a member of the Armed Forces described in subsection (b) who is accepted to participate in an upward bound project assisted under section 402C of the Higher Education Act of 1965 (20 U.S.C. 1070a–13) to cover the cost of providing services through the project to the member to assist the member to prepare for and pursue a program of higher education upon separation from active duty. Assistance provided under the program may include a stipend provided under subsection (d) of such section.

(b) ELIGIBLE MEMBERS.—A member of the Armed Forces shall be eligible for assistance under subsection (a) if the member—

(1) was on active duty or full-time National Guard duty on September 30, 1990;

(2) during the five-year period beginning on that date, was or is discharged or released from such duty (under other than adverse circumstances); and

(3) submits an application to the Secretary of Defense within such time, in such form, and containing such information as the Secretary of Defense may require.

(c) NOTIFICATION OF MEMBERS PREVIOUSLY SEPARATED.—To the extent feasible, the Secretary of Defense shall notify members of the Armed Forces who, between September 30, 1990, and [Oct. 23, 1992], were discharged or released from active duty or full-time National Guard duty regarding the availability of the program under subsection (a). The Secretary may establish a time limit within which such members may apply to participate in the program.

(d) PROVISION OF ASSISTANCE.—

(1) DETERMINATION OF AMOUNT.—The amount of assistance provided under subsection (a) to a member of the Armed Forces shall be equal to the anticipated cost of providing services to the member through an upward bound project, subject to the limitation that such amount may not exceed the monthly basic pay to which the member is entitled at the time of the separation of the member. The Secretary of Defense may provide assistance in excess of that limitation if the Secretary determines, on a case by case basis, that such assistance is warranted by the special training needs of the member.

(2) CONSULTATION.—The Secretary of Education may assist the Secretary of Defense in determining the amount to be provided under paragraph (1).

(e) USE OF ASSISTANCE.—A member of the Armed Forces who is selected to participate in the program may receive services through any upward bound project assisted under section 402C of the Higher Education Act of 1965 (20 U.S.C. 1070a–13) to the same extent as other individuals eligible to receive such services. A member may not participate after the end of the two-year period beginning on the date on which the member is discharged or released from active duty, except that, in the case of a member described in subsection (b) who was discharged or released from active duty before [Oct. 23, 1993], the period for participation in the program shall be two years from [Oct. 23, 1993].

(f) REIMBURSEMENT.—Upon submission to the Secretary of Defense of a request for reimbursement of the costs to provide services to a participant, the Secretary shall reimburse the upward bound project submitting the request for the actual cost of providing services (including a stipend) to the member, not to exceed the amount provided under subsection (d)(1). Funds provided under this subsection shall be in addition to the funds otherwise provided to the project under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.). Not more than 10 percent of the funds provided under this subsection may be used for administrative costs.

(g) FUNDING FOR FISCAL YEAR 1993.—Of the amount authorized to be appropriated in section 301 for Defense Agencies, $5,000,000 shall be available to provide assistance under this section.

(h) APPLICATION TO COAST GUARD.—The Secretary of Transportation may implement the provisions of this section for the Coast Guard in the same manner and to the same extent as such section applies to the Department of Defense.

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Subtitle G—Service Members Occupational Conversion and Training

SEC. 4481. SHORT TITLE.

This subtitle may be cited as the "Service Members Occupational Conversion and Training Act of 1992".

SEC. 4482. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the men and women serving in our Nation's Armed Forces are of the highest caliber—intelligent, dedicated, and disciplined—and hundreds of thousands of these service members will be separating from the Armed Forces due to the drawdown in military personnel;

(2) these men and women will be entering the civilian workforce during a time of economic instability and uncertainty;

(3) many of these service personnel specialized in critical skills such as combat arms which will not transfer to the civilian workforce;

(4) as part of the Nation's obligation to these service members, the Secretary of Defense has a unique responsibility and obligation to provide them with the tools they need to be reassimilated into the civilian community and continue to be outstanding, productive citizens;

(5) the rapid placement of separated military personnel in civilian employment and training opportunities will significantly reduce the Department of Defense's costs relative to unemployment compensation for ex-service members;

(6) military personnel are a national resource whose skills and abilities must be absorbed by and integrated into the civilian workforce; and

(7) providing such training will reduce the total cost of the drawdown and is important to the national defense function of the Department of Defense.

(b) PURPOSE.—The purpose of this subtitle is to provide additional means by which the Secretary of Defense can manage the drawdown of the Armed Forces and to provide additional forms of assistance to members of the Armed Forces who are forced or induced to leave military service by reason of the drawdown of the Armed Forces, thereby facilitating the Secretary's ability to achieve end strength reductions caused by the drawdown.

SEC. 4483. DEFINITIONS.

For the purposes of this subtitle:

(1) The term "Secretary" means the Secretary of Defense with respect to the Department of Defense and the Secretary of Transportation with respect to the Coast Guard.

(2) The terms "veteran", "compensation", "service-connected", "State", and "active military, naval, or air service" have the meanings given such terms in paragraphs (2), (13), (16), (20), and (24), respectively, of section 101 of title 38, United States Code.

SEC. 4484. ESTABLISHMENT OF PROGRAM.

(a) ESTABLISHMENT.—Not later than 60 days after [Oct. 23, 1992], the Secretary shall carry out a program in accordance with this subtitle to assist eligible persons in obtaining employment through participation in programs of significant training for employment in stable and permanent positions. The Secretary may enter into an agreement with the Secretary of Veterans Affairs, the Secretary of Labor, or both, for the implementation of the program. The program shall be carried out through payments to employers who employ and train eligible persons in such positions. Such payments shall be made to assist such employers in defraying the costs of necessary training.

(b) STATE AGENCIES.—(1) The implementing official may enter into contracts or agreements with State approving agencies, as designated pursuant to section 3671(a) of title 38, United States Code, or other State agencies to carry out any duty of the implementing official under this subtitle. Payment may be made to such agencies pursuant to any such contract or agreement for reasonable and necessary expenses of salary and travel incurred by employees of such agencies in carrying out such duties. Each such payment may be made only from funds available to the implementing official pursuant to section 4495(a)(3).

(2) Each State approving agency or other State agency with which a contract or agreement is entered into under this section shall submit to the implementing official on a monthly or quarterly basis, as determined by the agency, a report containing a certification of such expenses for the period covered by the report. The report shall be submitted in the form and manner required by such official.

(c) EXPEDITIOUS IMPLEMENTATION.—A requirement in this subtitle to issue regulations shall not be the basis for a delay in carrying out this program within the time limit established by subsection (a).

SEC. 4485. ELIGIBILITY FOR PROGRAM; PERIOD OF TRAINING.

(a) IN GENERAL.—(1) To be eligible for participation in a program of job training under this subtitle, an eligible person must be an eligible person described in paragraph (2) who—

(A)(i) is unemployed at the time of applying for participation in a program under this subtitle; and

(ii) has been unemployed for at least 8 of the 15 weeks immediately preceding the date of such eligible person's application for participation in a program under this subtitle;

(B) separates from the active military, naval, or air service and whose primary or secondary occupational specialty in the Armed Forces is (as determined

under regulations prescribed by the Secretary and in effect before the date of such separation) not readily transferable to the civilian workforce; or

(C) served in the active military, naval, or air service and is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under the laws administered by the Secretary of Veterans Affairs for a disability rated at 30 percent or more.

(2) For purposes of paragraph (1), an eligible person referred to in paragraph (1) is a veteran who—

(A) was discharged on or after August 2, 1990; and

(B)(i) served in the active military, naval, or air service for a period of more than 90 days; or

(ii) was discharged or released from active duty because of a service-connected disability.

(3) For purposes of paragraph (1), an eligible person shall be considered to be unemployed during any period such person is without a job and wants and is available for work. In determining whether a person is unemployed for purposes of paragraph (1), the implementing official shall not take into consideration part-time or temporary employment, as defined by such official.

(b) APPLICATION PROCESS.—(1) An eligible person who desires to participate in a program of job training under this subtitle shall submit to the implementing official an application for participation in such a program. Such an application—

(A) shall include a certification by the eligible person that the eligible person meets the criteria for eligibility prescribed by subparagraph (A), (B), or (C) of subsection (a)(1);

(B) shall include an opportunity for the eligible person to request counseling under section 4493(a); and

(C) shall be in such form and contain such additional information as such official may prescribe.

(2)(A) Subject to subparagraph (B), an application by an eligible person for participation in a program of job training under this subtitle shall be approved unless the implementing official finds that the eligible person is not eligible to participate in a program of job training under this subtitle.

(B) Approval of an application of an eligible person under this subtitle may be withheld if the implementing official determines that, because of limited funds available for the purpose of making payments to employers under this subtitle, it is necessary to limit the number of participants in the program carried out under this subtitle.

(3)(A) Subject to section 4491(c), the implementing official shall certify as eligible for participation under this subtitle an eligible person whose application is approved under this subsection and shall furnish the eligible person with a certificate of that eligible person's eligibility for presentation to an employer offering a program of job training under this subtitle. Any such certificate shall expire 180 days after it is furnished to the eligible person. The date on which a certificate is furnished to an eligible person under this paragraph shall be stated on the certificate.

(B) A certificate furnished under this paragraph may, upon the eligible person's application, be renewed in accordance with the terms and conditions of subparagraph (A).

(c) APPEAL OF DENIAL OF CERTIFICATE.—The implementing official shall permit each eligible person who is not issued a certificate of eligibility under subsection (b) (other than an eligible person who is not issued such a certificate by reason of subsection (b)(2)(B)) to challenge in a hearing before the implementing official the decision of the implementing official not to issue the certificate. The implementing official shall prescribe procedures with respect to the initiation and conduct of hearings under this subsection.

(d) PERIOD OF TRAINING.—An employer shall provide a period of training under a program of job training under this subtitle of not less than 6 months in a field of employment providing a reasonable probability of stable, long-term employment.

SEC. 4486. APPROVAL OF EMPLOYER PROGRAMS.

(a) IN GENERAL.—(1) An employer may be paid assistance under section 4487(a) on behalf of an eligible person employed by such employer and participating in a program of job training offered by that employer only if the program is approved under this section.

(2) Except as provided in subsection (b), a proposed program of job training of an employer shall be approved unless the implementing official determines that the application does not contain a certification and other information meeting the requirements established under this subtitle or that withholding of approval is warranted under subsection (g).

(b) INELIGIBLE PROGRAMS.—A program of job training—

(1) for employment which consists of seasonal, intermittent, or temporary jobs;

(2) for employment under which commissions are the primary source of income;

(3) for employment which involves political or religious activities;

(4) for employment with any department, agency, instrumentality, or branch of the Federal Government (including the United States Postal Service and the Postal Rate Commission); or

(5) for employment outside of a State,

may not be approved under this subtitle.

(c) APPLICATION.—An employer offering a program of job training that the employer desires to have approved for the purposes of this subtitle shall submit to the implementing official a written application for such approval. Such application shall be in such form as such official shall prescribe.

(d) CERTIFICATION.—An application under subsection (c) shall include a certification by the employer of the following:

(1) That the employer is planning that, upon an eligible person's completion of the program of job training, the employer will employ the eligible person in a position for which the eligible person has been trained and that the employer expects that such a position will be available on a stable and permanent basis to the eligible person at the end of the training period.

(2) That the wages and benefits to be paid to an eligible person participating in the employer's program of job training will be not less than the wages and benefits normally paid to other employees participating in the same or a comparable program of job training in the community for the entire period of training of the eligible person.

(3) That the employment of an eligible person under the program—

(A) will not result in the displacement of currently employed workers (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits); and

(B) will not be in a job (i) while any other individual is on layoff from the same or any substantially equivalent job, or (ii) the opening for which was created as a result of the employer having terminated the employment of any regular employee or otherwise having reduced its work force with the intention of hiring an eligible person in such job under this subtitle.

(4) That the employer will not employ in the program of job training an eligible person who is already qualified by training and experience for the job for which training is to be provided.

(5) That the job which is the objective of the training program is one that involves significant training.

(6) That the training content of the program is adequate, in light of the nature of the occupation for which training is to be provided and of comparable training opportunities in such occupation, to accomplish the training objective certified under paragraph (2) of subsection (e).

(7) That each participating eligible person will be employed full time in the program of job training.

(8) That the training period under the proposed program is not longer than the training periods that employers in the community customarily require new employees to complete in order to become competent in the occupation or job for which training is to be provided.

(9) That there are in the training establishment or place of employment such space, equipment, instructional material, and instructor personnel as are needed to accomplish the training objective certified under subsection (e)(2).

(10) That the employer will keep records adequate to show the progress made by each eligible person participating in the program and otherwise to demonstrate compliance with the requirements established under this subtitle.

(11) That the employer will furnish each participating eligible person, before the eligible person's entry into training, with a copy of the employer's certification under this subsection and will obtain and retain the eligible person's signed acknowledgment of having received such certification.

(12) That, as applicable, the employer will provide each participating eligible person with the full opportunity to participate in a personal interview pursuant to section 4493(b)(1)(B) during the eligible person's normal workday.

(13) That the program meets such other criteria as the Secretary, in consultation with the Secretary of Veterans Affairs and the Secretary of Labor, may determine are essential for the effective implementation of the program established by this subtitle.

(e) HOURS AND TRAINING CONTENT.—A certification under subsection (d) shall include—

(1) a statement indicating (A) the total number of hours of participation in the program of job training to be offered an eligible person, (B) the length of the program of job training, and (C) the starting rate of wages to be paid to a participant in the program; and

(2) a description of the training content of the program (including any agreement the employer has entered into with an educational institution under section 4489) and of the objective of the training.

(f) STATUS OF CERTIFIED MATTERS.—(1) Except as specified in paragraph (2), each matter required to be certified to in paragraphs (1) through (11) of subsection (d) shall be considered to be a requirement established under this subtitle.

(2)(A) For the purposes of section 4487(c), only matters required to be certified in paragraphs (1) through (10) of subsection (d) shall be so considered.

(B) For the purposes of section 4490, a matter required to be certified under paragraph (12) of subsection (d) shall also be so considered.

(g) WITHHOLDING APPROVAL; DISAPPROVAL.—In accordance with regulations which the Secretary shall prescribe, the implementing official may withhold approval of an employer's proposed program of job training pending the outcome of an investigation under section 4491 and, based on the outcome of such an investigation, may disapprove such program.

(h) ON-JOB TRAINING.—For the purposes of this section, approval of a program of apprenticeship or other on-job training for the purposes of section 3687 of title 38, United States Code, shall be considered to meet all requirements established under the provisions of this subtitle (other than subsection (b) and (d)(3)) for approval of a program of job training.

SEC. 4487. PAYMENTS TO EMPLOYERS; OVERPAYMENT.

(a) PAYMENTS.—(1)(A) Except as provided in subsections (b) and (c) and subject to section 4485(d), the implementing official shall make payments to employers in accordance with this section. The amount payable to such an employer on behalf of an eligible person with respect to an approved program of job training under this subtitle shall be determined by such official at the beginning of such program. Except as provided in subparagraphs (B) and (C), that amount shall be equal to 50 percent of the product of (i) the starting hourly rate of wages paid to the eligible person by the employer (without regard to overtime or premium pay), and (ii) the number of hours to be worked by the eligible person during the entire program period but in no event to exceed hours equivalent to 18 months of training.

(B) In no case may the amount determined under subparagraph (A) exceed—

(i) $12,000 for an eligible person with a service-connected disability rated at 30 percent or more; or

(ii) $10,000 for an eligible person not described in clause (i).

(C) Assistance may be paid under this subtitle on behalf of an eligible person to that person's employer for training under two or more programs of job training under this subtitle if such employer has not received (or is not due) on that person's behalf assistance in an amount aggregating the applicable amount set forth in subparagraph (B).

(b) PAYMENT PERIOD.—(1) Except as provided in paragraphs (2) and (3), the implementing official shall pay training assistance to employers under this section on a quarterly basis.

(2) The implementing official may pay training assistance to an employer on a monthly basis if the implementing official determines (pursuant to regulations prescribed by the implementing official) that the number of employees of the employer is such that the payment of assistance on a quarterly basis would be burdensome to the employer.

(3) The implementing official shall withhold 25 percent of each payment due under this subsection with respect to an eligible person. The total amount withheld with respect to an eligible person under this paragraph shall be paid to the employer at the end of the four month period of employment of such person under this subtitle beginning on the date of completion of training, or upon the completion of the 18th month of training under the last training program approved for the person's pursuit with that employer under this subtitle, whichever is earlier.

(c) TOOLS AND OTHER WORK-RELATED MATERIALS.—In addition to payments under subsection (a), the implementing official shall reimburse the employer for the cost of tools and other work-related materials necessary for the eligible person's participation in the program of job training in an amount up to $500 if the employer presents to the implementing official a certification signed by the employer and eligible person that—

(1) tools and other work-related materials are necessary for the eligible person's participation in the job training program,

(2) the eligible person bought the tools and other work-related materials, and

(3) the employer paid the eligible person for the cost of the tools and other work-related materials.

(d) OVERPAYMENTS.—(1)(A) Whenever the implementing official finds that an overpayment under this subtitle has been made to an employer on behalf of an eligible person as a result of a certification, or information contained in an application, submitted by an employer which was false in any material respect, the amount of such overpayment shall constitute a liability of the employer to the United States.

(B) Whenever such official finds that an employer has failed in any substantial respect to comply for a period of time with a requirement established under this subtitle (unless the employer's failure is the result of false or incomplete information provided by the eligible person), each amount paid to the employer on behalf of an eligible person for that period shall be considered to be an overpayment under this subtitle, and the amount of such overpayment shall constitute a liability of the employer to the United States.

(2) Whenever such official finds that an overpayment under this subtitle has been made to an employer on behalf of an eligible person as a result of a certification by the eligible person, or as a result of information provided to an employer or contained in an application submitted by the eligible person, which was willfully or negligently false in any material respect, the amount of such overpayment shall constitute a liability of the eligible person to the United States.

(3) Any overpayment referred to in paragraph (1) or (2) may be recovered in the same manner as any other debt due the United States. Any overpayment recovered shall be credited to funds available to make payments under this subtitle. If there are no such funds, any overpayment recovered shall be deposited into the Treasury.

(4) Any overpayment referred to in paragraph (1) or (2) may be waived, in whole or in part, in accordance with the terms and conditions set forth in section 5302 of title 38, United States Code.

(e) LIMITATIONS.—(1) Payment may not be made to an employer for a period of training under this subtitle on behalf of an eligible person until the implementing official has received—

(A) from the eligible person, a certification that the eligible person was employed full time by the employer in a program of job training during such period; and

(B) from the employer, a certification—

(i) that the eligible person was employed by the employer during that period and that the eligible person's performance and progress during such period were satisfactory; and

(ii) of the number of hours worked by the eligible person during that period.

With respect to the first such certification by an employer with respect to an eligible person, the certification shall indicate the date on which the employment of the eligible person began and the starting hourly rate of wages paid to the eligible person (without regard to overtime or premium pay).

(2) Payment may not be made to an employer for a period of training under this subtitle on behalf of an eligible person for which a request for payment is made after two years after the date on which that period of training ends.

SEC. 4488. ENTRY INTO PROGRAM OF JOB TRAINING.

(a) IN GENERAL.—Notwithstanding any other provision of this subtitle, the implementing official shall withhold or deny approval of an eligible person's entry into an approved program of job training if such official determines that funds are not available to make payments under this subtitle on behalf of the eligible person to the employer offering that program. Before the entry of an eligible person into an approved program of job training of an employer for purposes of assistance under this subtitle, the employer shall notify such official of the employer's intention to employ that eligible person. The eligible person may begin such program of job training with the employer on the day that notice is transmitted to such official by means prescribed by such official. However, assistance under this subtitle may not be provided to the employer if such official, within two weeks after the date on which such notice is transmitted, disapproves the eligible person's entry into that program of job training in accordance with this section.

(b) PERIOD FOR COMMENCEMENT OF PARTICIPATION UNDER CERTIFICATE.—An eligible person who is issued a certificate of eligibility for participation in a program of job training under this subtitle shall commence participation in such a program

not more than 180 days after the date of the issuance of the certificate. The date on which a certificate is furnished to an eligible person shall be stated on the certificate.

SEC. 4489. PROVISION OF TRAINING THROUGH EDUCATIONAL INSTITUTIONS.

An employer may enter into an agreement with an educational institution that has been approved for the purposes of chapter 106 of title 10, United States Code, or any other institution offering a program of job training, approved by the Secretary of Veterans Affairs, in order that such institution may provide a program of job training (or a portion of such a program) under this subtitle. When such an agreement has been entered into, the application of the employer under section 4486 shall so state and shall include a description of the training to be provided under the agreement.

SEC. 4490. DISCONTINUANCE OF APPROVAL OF PARTICIPATION IN CERTAIN EMPLOYER PROGRAMS.

(a) FAILURE TO MEET REQUIREMENTS.—If the implementing official finds at any time that a program of job training previously approved for the purposes of this subtitle thereafter fails to meet any of the requirements established under this subtitle, such official may immediately disapprove further participation by eligible persons in that program. Such official shall provide to the employer concerned, and to each eligible person participating in the employer's program, a statement of the reasons for, and an opportunity for a hearing with respect to, such disapproval. The employer and each such eligible person shall be notified of such disapproval, the reasons for such disapproval, and the opportunity for a hearing. Notification shall be by a certified or registered letter, and a return receipt shall be secured.

(b) RATE OF COMPLETION.—(1) If the implementing official determines that the rate of eligible persons' successful completion of an employer's programs of job training previously approved for the purposes of this subtitle is disproportionately low because of deficiencies in the quality of such programs, such official shall disapprove participation in such programs on the part of eligible persons who had not begun such participation on the date that the employer is notified of the disapproval. In determining whether any such rate is disproportionately low because of such deficiencies, such official shall take into account appropriate data, including—

(A) the quarterly data provided by the Secretary of Labor with respect to the number of eligible persons who receive counseling in connection with training under this subtitle, are referred to employers under this subtitle, participate in job training under this subtitle, and complete such training or do not complete such training, and the reasons for noncompletion; and

(B) data compiled through the particular employer's compliance surveys.

(2) With respect to a disapproval under paragraph (1), the implementing official shall provide to the employer concerned the kind of statement, opportunity for hearing, and notice described in subsection (a).

(3) A disapproval under paragraph (1) shall remain in effect until such time as the implementing official determines that adequate remedial action has been taken.

SEC. 4491. INSPECTION OF RECORDS; INVESTIGATIONS.

(a) RECORDS.—The records and accounts of employers pertaining to eligible persons on behalf of whom assistance has been paid under this subtitle, as well as other records that the implementing official determines to be necessary to ascertain compliance with the requirements established under this subtitle, shall be available at reasonable times for examination by authorized representatives of the Federal Government.

(b) COMPLIANCE MONITORING.—Such official may monitor employers and eligible persons participating in programs of job training under this subtitle to determine compliance with the requirements established under this subtitle.

(c) INVESTIGATIONS.—Such official may investigate any matter such official considers necessary to determine compliance with the requirements established under this subtitle. The investigations authorized by this subsection may include examining records (including making certified copies of records), questioning employees, and entering into any premises or onto any site where any part of a program of job training is conducted under this subtitle, or where any of the records of the employer offering or providing such program are kept.

(d) DEPARTMENT OF LABOR.—Functions may be administered under subsections (b) and (c) in accordance with an agreement between the Secretary and the Secretary of Labor providing for the administration of such subsections (or any portion of such subsections) by the Department of Labor. Under such an agreement, any entity of the Department of Labor specified in the agreement may administer such subsections.

SEC. 4492. COORDINATION WITH OTHER PROGRAMS.

(a) VETERANS EDUCATION PROGRAMS.—(1) Assistance may not be paid under this subtitle to an employer on behalf of an eligible person for any period of time described in paragraph (2) and to such eligible person under chapter 30, 31, 32, 35, or 36 of title 38, United States Code, or chapter 106 of title 10, United States Code, for the same period of time.

(2) A period of time referred to in paragraph (1) is the period of time beginning on the date on which the eligible person enters into an approved program of job training of an employer for purposes of assistance under this subtitle and ending on the last date for which such assistance is payable.

(b) OTHER TRAINING AND EMPLOYMENT.—Assistance may not be paid under this subtitle to an employer on behalf of an eligible person for any period if the employer receives for that period any other form of assistance on account of the training or employment of the eligible person, including assistance under title I of the Workforce Investment Act of 1998 or a credit under section 51 of the Internal Revenue Code of 1986 (relating to credit for employment of certain new employees).

(c) PREVIOUS COMPLETION OF PROGRAM.—Assistance may not be paid under this subtitle on behalf of an eligible person who has completed a program of job training under this subtitle.

(d) PROMOTION.—(1) In carrying out section 3116(b) of title 38, United States Code, the Secretary of Veterans Affairs shall take all feasible steps to establish and encourage, for eligible persons who are eligible to have payments made on their behalf under such section, the development of training opportunities through programs of job training under this subtitle.

(2) The Secretary of Veterans Affairs, in cooperation with the implementing official (unless the Secretary of Veterans Affairs is the implementing official), shall take all feasible steps to ensure that, in the cases of eligible persons who are eligible to have payments made on their behalf under both this subtitle and section 3116(b) of title 38, United States Code, the authority under such section is utilized, to the maximum extent feasible and consistent with the eligible person's best interests, to make payments to employers on behalf of such eligible persons.

SEC. 4493. COUNSELING.

(a) IN GENERAL.—The implementing official shall, upon request, provide, by contract or otherwise, employment counseling services to any eligible person eligible to participate under this subtitle in order to assist such eligible person in selecting a suitable program of job training under this subtitle.

(b) CASE MANAGER.—(1) The implementing official shall provide for a program under which—

(A) except as provided in paragraph (2), a disabled veteran's outreach program specialist appointed under section 4103A(a) of title 38, United States Code, is assigned as a case manager for each eligible person participating in a program of job training under this subtitle;

(B) the eligible person has an in-person interview with the case manager not later than 60 days after entering into a program of training under this subtitle; and

(C) periodic (not less frequent than monthly) contact is maintained with each such eligible person for the purpose of (i) avoiding unnecessary termination of employment, (ii) referring the eligible person to appropriate counseling, if necessary, (iii) facilitating the eligible person's successful completion of such program, and (iv) following up with the employer and the eligible person in order to determine the eligible person's progress in the program and the outcome regarding the eligible person's participation in and successful completion of the program.

(2) No case manager shall be assigned pursuant to paragraph (1)(A)—

(A) for an eligible person if, on the basis of a recommendation made by a disabled veterans' outreach program specialist, the implementing official determines that there is no need for a case manager for such eligible person; or

(B) in the case of the employees of an employer, if the implementing official determines that—

(i) the employer has an appropriate and effective employee assistance program that is available to all eligible persons participating in the employer's programs of job training under this subtitle; or

(ii) the rate of eligible persons' successful completion of the employer's programs of job training under this subtitle, either cumulatively or during the previous program year, is 60 percent or higher.

(3) The implementing official shall provide, to the extent feasible, a program of counseling or other services designed to resolve difficulties that may be encountered

by eligible persons during their training under this subtitle. Such counseling or other services shall be similar to the counseling and other services provided under sections 1712A, 3697A, 4103A, 4104, 7723, and 7724 of title 38, United States Code, and section 1144 of title 10, United States Code.

(c) CASE MANAGER REQUIRED.—Before an eligible person who voluntarily terminates from a program of job training under this subtitle or is involuntarily terminated from such program by the employer may be eligible to be provided with a further certificate, or renewal of certification, of eligibility for participation under this subtitle, such eligible person must be provided by the Secretary of Labor, after consultation with the implementing official, with a case manager.

SEC. 4494. INFORMATION AND OUTREACH; USE OF AGENCY RESOURCES.

(a) IN GENERAL.—(1) The Secretary, the Secretary of Veterans Affairs, and the Secretary of Labor shall jointly provide for an outreach and public information program—

(A) to inform eligible persons about the employment and job training opportunities available under this subtitle and under other provisions of law; and

(B) to inform private industry and business concerns (including small business concerns), public agencies and organizations, educational institutions, trade associations, and labor unions about the job training opportunities available under, and the advantages of participating in, the program established by this subtitle.

(2) The Secretary, in consultation with the Secretary of Labor and the Secretary of Veterans Affairs, shall promote the development of employment and job training opportunities for eligible persons by encouraging potential employers to make programs of job training under this subtitle available for eligible persons, by advising other appropriate Federal departments and agencies of the program established by this subtitle, and by advising employers of applicable responsibilities under chapters 41 and 42 of title 38, United States Code, with respect to eligible persons.

(b) COORDINATION.—The Secretary, the Secretary of Veterans Affairs, and the Secretary of Labor shall coordinate the outreach and public information program under subsection (a)(1), and job development activities under subsection (a)(2), with job counseling, placement, job development, and other services provided for under chapters 41 and 42 of title 38, United States Code, and with other similar services offered by other public agencies and organizations.

(c) AGENCY RESOURCES.—(1) The Secretary, the Secretary of Veterans Affairs, and the Secretary of Labor shall make available such personnel as are necessary to facilitate the effective implementation of this subtitle.

(2) In carrying out the responsibilities of the Secretary of Labor under this subtitle, the Secretary of Labor shall make maximum use of the services of Directors and Assistant Directors for Veterans' Employment and Training, disabled veterans' outreach program specialists, and employees of local offices, appointed pursuant to sections 4103, 4103A, and 4104 of title 38, United States Code. To the extent that the implementing official withholds approval of eligible persons' applications under this subtitle pursuant to section 4485(b)(2)(B), the Secretary of Labor shall take steps to assist such eligible persons in taking advantage of opportunities that may be available to them under any other program carried out with funds provided by the Secretary of Labor.

(d) SMALL BUSINESS.—The implementing official shall request and obtain from the Administrator of the Small Business Administration a list of small business concerns and shall, on a regular basis, update such list. Such list shall be used to identify and promote possible training and employment opportunities for eligible persons.

(e) ASSISTANCE TO PARTICIPATE.—The Secretary, the Secretary of Veterans Affairs, and the Secretary of Labor shall assist eligible persons and employers desiring to participate under this subtitle in making application and completing necessary certifications.

(f) COLLECTION OF CERTAIN INFORMATION.—The Secretary of Labor shall, on a not less frequent than quarterly basis, collect and compile from the heads of State employment services and Directors for Veterans' Employment and Training for each State information available to such heads and Directors, and derived from programs carried out in their respective States, with respect to the numbers of eligible persons who receive counseling services pursuant to section 4493, who are referred to employers participating under this subtitle, who participate in programs of job training under this subtitle (including a description of the nature of the training and salaries that are part of such programs), and who complete such programs, and the reasons for eligible persons' noncompletion.

SEC. 4495. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—(1) Of the amounts authorized to be appropriated in section 301 for Defense Agencies, $75,000,000 shall be made available for the purpose of making payments to employers under this subtitle. Of the amounts made available pursuant to section 1302(a) of the National Defense Authorization Act for Fiscal Year 1994 [P.L. 103–160; 107 Stat. 1783], $25,000,000 shall be made available for the purpose of making payments to employers under this subtitle. The Secretary of Veterans Affairs and the Secretary of Labor shall submit an estimate to the Secretary of the amount needed to carry out any agreement entered into under section 4484(a), including administrative costs referred to in paragraph (3). Such agreements shall include administrative procedures to ensure the prompt and timely payments to employers by the implementing official.

(2) Amounts made available pursuant to this section for a fiscal year shall remain available until the end of the second fiscal year following the fiscal year in which such amounts were appropriated.

(3) Of the amounts made available pursuant to this section for a fiscal year, six percent of such amounts may be used for the purpose of administering this subtitle, including reimbursing expenses incurred.

(b) AVAILABILITY OF DEOBLIGATED FUNDS.—Notwithstanding any other provision of law, any funds made available pursuant to this section for a fiscal year which are obligated for the purpose of making payments under section 4487 on behalf of an eligible person (including funds so obligated which previously had been obligated for such purpose on behalf of another eligible person and were thereafter deobligated) and are later deobligated shall immediately upon deobligation become available to the implementing official for obligation for such purpose. The further obligation of such funds by such official for such purpose shall not be delayed, directly or indirectly, in any manner by any officer or employee in the executive branch.

SEC. 4496. TIME PERIODS FOR APPLICATION AND INITIATION OF TRAINING.

Assistance may not be paid to an employer under this subtitle—

(1) on behalf of an eligible person who initially applies for a program of job training under this subtitle after September 30, 1996; or

(2) for any such program which begins after March 31, 1997.

SEC. 4497. TREATMENT OF CERTAIN PROVISIONS OF LAW UPON TRANSFER OF AMOUNTS PROVIDED UNDER THIS ACT.

(a) CONTINGENT AMENDMENT.—If a transfer is made in accordance with section 4501(c) of the full amount of the amount provided under section 4495(a) for the program established under section 4484(a), then, effective as of [Oct. 23, 1992], the first sentence of section 4484(a) is amended by striking "the Secretary shall carry out" and inserting "the Secretary may carry out".

(b) PUBLICATION IN THE FEDERAL REGISTER.—If the transfer described in subsection (a) is made, then the Secretary of Defense shall promptly publish in the Federal Register a notice of such transfer. Such notice shall specify the date on which such transfer occurred.

CHAPTER 59—SEPARATION

Sec.
1161. Commissioned officers: limitations on dismissal.
[1162. Repealed.]
[1163. Repealed.]
1164. Warrant officers: separation for age.
1165. Regular warrant officers: separation during three-year probationary period.
1166. Regular warrant officers: elimination for unfitness or unsatisfactory performance.
1167. Members under confinement by sentence of court-martial: separation after six months confinement.
1168. Discharge or release from active duty: limitations.
1169. Regular enlisted members: limitations on discharge.
1170. Regular enlisted members: minority discharge.
1171. Regular enlisted members: early discharge.
1172. Enlisted members: during war or emergency; discharge.
1173. Enlisted members: discharge for hardship.
1174. Separation pay upon involuntary discharge or release from active duty.
1174a. Special separation benefits programs.
1175. Voluntary separation incentive.
1176. Enlisted members: retention after completion of 18 or more, but less than 20, years of service.
[1177. Repealed.]
1178. System and procedures for tracking separations resulting from refusal to participate in anthrax vaccine immunization program.

§ 1161. Commissioned officers: limitations on dismissal

(a) No commissioned officer may be dismissed from any armed force except—

(1) by sentence of a general court-martial;

(2) in commutation of a sentence of a general court-martial; or

(3) in time of war, by order of the President.

(b) The President may drop from the rolls of any armed force any commissioned officer (1) who has been absent without authority for at least three months, (2) who may be separated under section 1167 of this title by reason of a sentence to confinement adjudged by a court-martial, or (3) who is sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

(Aug. 10, 1956, ch. 1041, 70A Stat. 89; amended Feb. 10, 1996, P.L. 104–106, § 563(b)(1), 110 Stat. 325; Sept. 23, 1996, P.L. 104–201, § 1074(a)(5), 110 Stat. 2658.)

[§ 1162. Repealed. P.L. 103–337, § 1662(i)(2), Oct. 5, 1994, 108 Stat. 2998]

[§ 1163. Repealed. P.L. 103–337, § 1662(i)(2), Oct. 5, 1994, 108 Stat. 2998]

§ 1164. Warrant officers: separation for age

(a) Unless retired or separated on or before the expiration of that period, each warrant officer shall be retired or separated from his armed force not later than 60 days after the date when he becomes 62 years of age, except as provided by section 8301 of title 5.

(b) The Secretary concerned may defer, for not more than four months, the separation under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to be retired or separated under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 90; Nov. 2, 1966, P.L. 89–718, § 3, 80 Stat. 1115; Nov. 8, 1967, P.L. 90–130, § 1(5), 81 Stat. 374; Dec. 12, 1980, P.L. 96–513, § 511(41), 94 Stat. 2923; Oct. 12, 1982, P.L. 97–295, § 1(16), 96 Stat. 1290.)

§ 1165. Regular warrant officers: separation during three-year probationary period

The Secretary concerned may terminate the regular appointment of any permanent regular warrant officer at any time within three years after the date when the officer accepted his original permanent appointment as a warrant officer in that component. A warrant officer who is separated under this section is entitled, if eligible therefor, to separation pay under section 1174 or he may be enlisted under section 515 of this title. If such a warrant officer is enlisted under section 515 of this title, he is not entitled to separation pay.

(Aug. 10, 1956, ch. 1041, 70A Stat. 90; Dec. 12, 1980, P.L. 96–513, § 109(b)(1), 94 Stat. 2870.)

§ 1166. Regular warrant officers: elimination for unfitness or unsatisfactory performance

(a) Under such regulations as the Secretary concerned may prescribe, and subject to the recommendations of a board of officers or a selection board under section 576 of this title, a permanent regular warrant officer who is eligible for retirement under any provision of law shall be retired under that law if his records and reports establish his unfitness or unsatisfactory performance of duty. If he is not eligible for retirement under any provision of law, but since the date when he accepted his original permanent appointment as a regular warrant officer he has at least three years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114), he shall, if eligible therefor, be separated with separation pay under section 1174 of this title or severance pay under section 286a of title 14, as appropriate. However, instead of being paid separation pay or severance pay he may be enlisted under section 515 of

this title. If he does not have three years of such service, he shall be separated under section 1165 of this title.

(b) The Secretary concerned may defer, for not more than four months, the retirement or separation under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to be retired or separated under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 90; Sept. 7, 1962, P.L. 87–649, § 6(f)(3), 76 Stat. 494; Dec. 12, 1980, P.L. 96–513, § 109(b)(2), 94 Stat. 2870; Dec. 5, 1991, P.L. 102–190, § 1131(5), 105 Stat. 1506.)

§ 1167. Members under confinement by sentence of court-martial: separation after six months confinement

Except as otherwise provided in regulations prescribed by the Secretary of Defense, a member sentenced by a court-martial to a period of confinement for more than six months may be separated from the member's armed force at any time after the sentence to confinement has become final under chapter 47 of this title and the member has served in confinement for a period of six months.

(Added P.L. 104–106, § 563(a)(1)(A), Feb. 10, 1996, 110 Stat. 325 [former 1167 repealed by § 109(b)(3) of P.L. 96–513]; P.L. 104–201, § 1074(a)(6), Sept. 23, 1996, 110 Stat. 2559.)

§ 1168. Discharge or release from active duty: limitations

(a) A member of an armed force may not be discharged or released from active duty until his discharge certificate or certificate of release from active duty, respectively, and his final pay or a substantial part of that pay, are ready for delivery to him or his next of kin or legal representative.

(b) This section does not prevent the immediate transfer of a member to a facility of the Department of Veterans Affairs for necessary hospital care.

(Added P.L. 87–651, § 106(b), Sept. 7, 1962, 76 Stat. 508; amended P.L. 101–189, § 1621(a)(4), Nov. 29, 1989, 103 Stat. 1603.)

§ 1169. Regular enlisted members: limitations on discharge

No regular enlisted member of an armed force may be discharged before his term of service expires, except—

(1) as prescribed by the Secretary concerned;

(2) by sentence of a general or special court martial; or

(3) as otherwise provided by law.

(Added P.L. 90–235, § 3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757.)

§ 1170. Regular enlisted members: minority discharge

Upon application by the parents or guardian of a regular enlisted member of an armed force to the Secretary concerned within 90 days after the member's enlistment, the member shall be discharged for his own convenience, with the pay and form of discharge certificate to which his service entitles him, if—

(1) there is evidence satisfactory to the Secretary concerned that the member is under eighteen years of age; and

(2) the member enlisted without the written consent of his parent or guardian.

(Added P.L. 90–235, § 3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757.)

§ 1171. Regular enlisted members: early discharge

Under regulations prescribed by the Secretary concerned and approved by the President, any regular enlisted member of an armed force may be discharged within three months before the expiration of the term of his enlistment or extended enlistment. A discharge under this section does not affect any right, privilege, or benefit that a member would have had if he completed his enlistment or extended enlistment, except that the member is not entitled to pay and allowances for the period not served.

(Added P.L. 90–235, § 3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757.)

§ 1172. Enlisted members: during war or emergency; discharge

A person enlisted under section 518 of this title may be discharged at any time by the President, or otherwise according to law.

(Added P.L. 90–235, § 3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757.)

§ 1173. Enlisted members: discharge for hardship

Under regulations prescribed by the Secretary concerned, a regular enlisted member of an armed force who has dependents may be discharged for hardship.

(Added P.L. 93–64, § 102, July 9, 1973, 87 Stat. 147.)

§ 1174. Separation pay upon involuntary discharge or release from active duty

(a) REGULAR OFFICERS.—(1) A regular officer who is discharged under chapter 36 of this title (except under section 630(1)(A) or 643 of such chapter), or under section 580 or 6383 of this title and who has completed six or more, but less than twenty, years of active service immediately before that discharge is entitled to separation pay computed under subsection (d)(1).

(2) A regular commissioned officer of the Army, Navy, Air Force, or Marine Corps who is discharged under section 630(1)(A), 643, or 1186 of this title, and a regular warrant officer of the Army, Navy, Air Force, or Marine Corps who is separated under section 1165 or 1166 of this title, who has completed six or more, but less than twenty, years of active service immediately before that discharge or separation is entitled to separation pay computed under subsection (d)(1) or (d)(2), as determined by the Secretary of the military department concerned, unless the Secretary concerned determines that the conditions under which the officer is discharged or separated do not warrant payment of such pay.

(3) Notwithstanding paragraphs (1) and (2), an officer discharged under any provision of chapter 36 of this title for twice failing of selection for promotion to the next higher grade is not entitled to separation pay under this section if either (or both) of those failures of selection for promotion was by the action of a selection board to which the officer submitted a request in writing

not to be selected for promotion or who otherwise directly caused his nonselection through written communication to the Board under section 614(b) of this title.

(4) Notwithstanding paragraphs (1) and (2), an officer who is subject to discharge under any provision of chapter 36 of this title or under section 580 or 6383 of this title by reason of having twice failed of selection for promotion to the next higher grade is not entitled to separation pay under this section if that officer, after such second failure of selection for promotion, is selected for, and declines, continuation on active duty for a period that is equal to or more than the amount of service required to qualify the officer for retirement.

(b) REGULAR ENLISTED MEMBERS.—(1) A regular enlisted member of an armed force who is discharged involuntarily or as the result of the denial of the reenlistment of the member and who has completed six or more, but less than 20, years of active service immediately before that discharge is entitled to separation pay computed under subsection (d) unless the Secretary concerned determines that the conditions under which the member is discharged do not warrant payment of such pay.

(2) Separation pay of an enlisted member shall be computed under paragraph (1) of subsection (d), except that such pay shall be computed under paragraph (2) of such subsection in the case of a member who is discharged under criteria prescribed by the Secretary of Defense.

(c) OTHER MEMBERS.—(1) Except as provided in paragraphs (2) and (3), a member of an armed force other than a regular member who is discharged or released from active duty and who has completed six or more, but fewer than 20, years of active service immediately before that discharge or release is entitled to separation pay computed under subsection (d)(1) or (d)(2), as determined by the Secretary concerned, if—

(A) the member's discharge or release from active duty is involuntary; or

(B) the member was not accepted for an additional tour of active duty for which he volunteered.

(2) If the Secretary concerned determines that the conditions under which a member described in paragraph (1) is discharged or separated do not warrant separation pay under this section, that member is not entitled to that pay.

(3) A member described in paragraph (1) who was not on the active-duty list when discharged or separated is not entitled to separation pay under this section unless such member had completed at least six years of continuous active duty immediately before such discharge or release. For purposes of this paragraph, a period of active duty is continuous if it is not interrupted by a break in service of more than 30 days.

(4) In the case of an officer who is subject to discharge or release from active duty under a law or regulation requiring that an officer who has failed of selection for promotion to the next higher grade for the second time be discharged or released from active duty and who, after such second failure of selection for promotion, is selected for, and declines, continuation on active duty—

(A) if the period of time for which the officer was selected for continuation on active duty is less than the amount of service that would be required to qualify the officer for retirement, the officer's discharge or release from active duty shall be considered to be involuntary for purposes of paragraph (1)(A); and

(B) if the period of time for which the officer was selected for continuation on active duty is equal to or more than the amount of service that would be required to qualify the officer for retirement, the officer's discharge or release from active duty shall not be considered to be involuntary for the purposes of paragraph (1)(A).

(d) AMOUNT OF SEPARATION PAY.—The amount of separation pay which may be paid to a member under this section is—

(1) 10 percent of the product of (A) his years of active service, and (B) 12 times the monthly basic pay to which he was entitled at the time of his discharge or release from active duty; or

(2) one-half of the amount computed under clause (1).

(e) REQUIREMENT FOR SERVICE IN READY RESERVE; EXCEPTIONS TO ELIGIBILITY.—(1)(A) As a condition of receiving separation pay under this section, a person otherwise eligible for that pay shall be required to enter into a written agreement with the Secretary concerned to serve in the Ready Reserve of a reserve component for a period of not less than three years following the person's discharge or release from active duty. If the person has a service obligation under section 651 of this title or under any other provision of law that is not completed at the time the person is discharged or released from active duty, the three-year obligation under this subsection shall begin on the day after the date on which the person completes the person's obligation under such section or other provision of law.

(B) Each person who enters into an agreement referred to in subparagraph (A) who is not already a Reserve of an armed force and who is qualified shall, upon such person's discharge or release from active duty, be enlisted or appointed, as appropriate, as a Reserve and be transferred to a reserve component.

(2) A member who is discharged or released from active duty is not eligible for separation pay under this section if the member—

(A) is discharged or released from active duty at his request;

(B) is discharged or released from active duty during an initial term of enlistment or an initial period of obligated service;

(C) is released from active duty for training; or

(D) upon discharge or release from active duty, is immediately eligible for retired or retainer pay based on his military service.

(f) COUNTING FRACTIONAL YEARS OF SERVICE.—In determining a member's years of active service for the purpose of computing separation pay under this section, each full month of service that is in addition to the number of full years of service creditable to the member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

(g) COORDINATION WITH OTHER SEPARATION OR SEVERANCE PAY BENEFITS.—A period for which a member has previously received separation pay under this section or severance pay or readjustment pay under any other provision of law based on service in the armed forces may not be included in determining the years of service that may be counted in computing the separation pay of the member under this section.

(h) COORDINATION WITH RETIRED OR RETAINER PAY AND DISABILITY COMPENSATION.—(1) A member who has received separation pay under this section, or separation pay, severance pay, or readjustment pay under any other provision of law, based on service in the armed forces, and who later qualifies for retired or retainer pay under this title or title 14 shall have deducted from each payment of such retired or retainer pay so much of such pay as is based on the service for which he received separation pay under this section or separation pay, severance pay, or readjustment pay under any other provision of law until the total amount deducted is equal to the total amount of separation pay, severance pay, and readjustment pay received.

(2) A member who has received separation pay under this section, or severance pay or readjustment pay under any other provision of law, based on service in the armed forces shall not be deprived, by reason of his receipt of such separation pay, severance pay, or readjustment pay, of any disability compensation to which he is entitled under the laws administered by the Department of Veterans Affairs, but there shall be deducted from that disability compensation an amount equal to the total amount of separation pay, severance pay, and readjustment pay received, less the amount of Federal income tax withheld from such pay (such withholding being at the flat withholding rate for Federal income tax withholding, as in effect pursuant to regulations prescribed under chapter 24 of the Internal Revenue Code of 1986). Notwithstanding the preceding sentence, no deduction may be made from disability compensation for the amount of any separation pay, severance pay, or readjustment pay received because of an earlier discharge or release from a period of active duty if the disability which is the basis for that disability compensation was incurred or aggravated during a later period of active duty.

(i) REGULATIONS; CREDITING OF OTHER COMMISSIONED SERVICE.—(1) The Secretary of Defense shall prescribe regulations, which shall be uniform for the Army, Navy, Air Force, and Marine Corps, for the administration of this section.

(2) Active commissioned service in the National Oceanic and Atmospheric Administration or the Public Health Service shall be credited as active service in the armed forces for the purposes of this section.

(Added P.L. 96–513, § 109(c), Dec. 12, 1980, 94 Stat. 2870; amended P.L. 97–22, § 10(b)(10)(A), July 10, 1981, 95 Stat. 137; P.L. 98–94, § 911, 923(b), § 1007(c)(2), Sept. 24, 1983, 97 Stat. 639, 643, 662; P.L. 98–498, § 320(a)(2), Oct. 19, 1984, 98 Stat. 2308; P.L. 101–189, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; P.L. 101–510, § 501(a)–(d), (g), (h), Nov. 5, 1990, 104 Stat. 1549, 1550; P.L. 102–190, § 1131(6), Dec. 5, 1991, 105 Stat. 1506; P.L. 103–160, § 501(a), Nov. 30, 1993, 107 Stat. 1644; P.L. 103–337, § 560(c), Oct. 5, 1994, 108 Stat. 2778; P.L. 104–201, § 653, Sept. 23, 1996, 110 Stat. 2583; P.L. 105–85, § 1073(a)(22), Nov. 18, 1997, 111 Stat. 1901; P.L. 105–261, § 502(a), Oct. 17, 1998, 112 Stat. 2003; P.L. 106–398, § 1[508(a), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–107.)

§ 1174a. Special separation benefits programs [1]

(a) REQUIREMENT FOR PROGRAMS.—The Secretary concerned shall carry out a special separation benefits program under this section. An eligible member of the armed forces may request separation under the program. The request shall be subject to the approval of the Secretary.

(b) BENEFITS.—Upon the approval of the request of an eligible member, the member shall—

(1) be released from active duty or full-time National Guard duty or discharged, as the case may be; and

(2) be entitled to—

(A) separation pay equal to 15 percent of the product of (i) the member's years of active service, and (ii) 12 times the monthly basic pay to which the member is entitled at the time of his discharge or release from active duty; [2] and

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[1] Section 507 of the National Defense Authorization Act for Fiscal Year 1994 (P.L. 103–160; 107 Stat. 1646), as amended, provides:

SEC. 507. REMEDY FOR INEFFECTIVE COUNSELING OF OFFICERS DISCHARGED FOLLOWING SELECTION BY EARLY DISCHARGE BOARDS.

(a) PROCEDURE FOR REVIEW.—(1) The Secretary of each military department shall establish a procedure for the review of the individual circumstances of an officer described in paragraph (2) who is discharged, or who the Secretary concerned approves for discharge, following the report of a selection board convened by the Secretary to select officers for separation. The procedure established by the Secretary of a military department under this section shall provide that each review under that procedure be carried out by the Board for the Correction of Military Records of that military department.

(2) This section applies in the case of any officer (including a warrant officer) who, having been offered the opportunity to be discharged or otherwise separated from active duty through the programs provided under section 1174a and 1175 of title 10, United States Code—

(A) elected not to accept such discharge or separation; and

(B) submits an application under subsection (b) during the two-year period beginning on the later of [Nov. 30, 1993] and the date of such discharge or separation.

(b) APPLICATION.—A review under this section shall be conducted in any case submitted to the Secretary concerned by application from the officer or former officer under regulations prescribed by the Secretary.

(c) PURPOSE OF REVIEW.—(1) The review under this section shall be designed to evaluate the effectiveness of the counseling of the officer before the convening of the board to ensure that the officer was properly informed that selection for discharge or other separation from active duty was a potential result of being within the group of officers to be considered by the board and that the officer was not improperly informed that such selection in that officer's personal case was unlikely.

(2) The Board for the Correction of Military Records of a military department shall render a decision in each case under this section not later than 60 days after receipt by the Secretary concerned of an application under subsection (b).

(d) REMEDY.—Upon a finding of ineffective counseling under subsection (c), the Secretary shall provide the officer the opportunity to participate, at the officer's option, in any one of the following programs for which the officer meets all eligibility criteria:

(1) The Special Separation Benefits program under section 1174a of title 10, United States Code.

(2) The Voluntary Separation Incentive program under section 1175 of such title.

(3) Retirement under the authority provided by section 4403 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2702; 10 U.S.C. 1293 note).

(e) EFFECTIVE DATE.—This section shall apply with respect to officers separated after September 30, 1990.

[2] Section 8106A of the Department of Defense Appropriations Act, 1995 (P.L. 103–335; 108 Stat. 2645), as amended by section 105(a) of Public Law 104–6, provides:

SEC. 8106A. In the case of members who separate from active duty or full-time National Guard duty in a military department pursuant to a Special Separation Benefits program (10 U.S.C. 1174a) or a Voluntary Separation Incentive program (10 U.S.C. 1175) at any time after [Sept. 30, 1994], the separation payments paid such members who are also paid any bonus provided for in chapter 5, title 37, United States Code, during the same years in which they separate shall be reduced (but in no event to an amount less than zero) by an amount equal to any such bonus: *Provided*, That any future bonus payments to which such members would otherwise be entitled are rescinded: *Provided further,* That this measure will not apply to members who separate during the last year of a bonus paid pursuant to chapter 5, title 37, United States Code: *Provided further,* That civilian employees of the Department of Defense are prohibited

(B) the same benefits and services as are provided under chapter 58 of this title, sections 404 and 406 of title 37, and section 503(c) of the National Defense Authorization Act for Fiscal Year 1991 (104 Stat. 1558; 37 U.S.C. 406 note) for members of the armed forces who are involuntarily separated within the meaning of section 1141 of this title.

(c) ELIGIBILITY.—Subject to subsections (d) and (e), a member of an armed force is eligible for voluntary separation under a program established for that armed force pursuant to this section if the member—

(1) has not been approved for payment of a voluntary separation incentive under section 1175 of this title;

(2) has served on active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty for more than 6 years;

(3) has served on active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty for not more than 20 years;

(4) has served at least 5 years of continuous active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty immediately preceding the date of the member's separation from active duty; and

(5) meets such other requirements as the Secretary may prescribe, which may include requirements relating to—

(A) years of service;

(B) skill or rating;

(C) grade or rank; and

(D) remaining period of obligated service.

(d) PROGRAM APPLICABILITY.—The Secretary concerned may provide for the program under this section to apply to any of the following members:

(1) A regular officer or warrant officer of an armed force.

(2) A regular enlisted member of an armed force.

(3) A member of an armed force other than a regular member.

(e) APPLICABILITY SUBJECT TO NEEDS OF THE SERVICE.—(1) Subject to paragraphs (2) and (3), the Secretary concerned may limit the applicability of a program under this section to any category of personnel defined by the Secretary in order to meet a need of the armed force under the Secretary's jurisdiction to reduce the number of members in certain grades, the number of members who have completed a certain number of years of active service, or the

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from receiving voluntary separation payments if such employees are rehired by any agency of the Federal Government within one hundred and eighty days of separating from the Department of Defense: *Provided further,* That if, after September 30, 1994, a member of the Armed Forces (other than the Coast Guard) is approved for release from active duty or full-time National Guard duty and that person subsequently becomes employed in a position of civilian employment in the Department of Defense within 180 days after the release from active duty or full-time National Guard duty, then that person is prohibited from receiving payments under a Special Separation Benefits program (under section 1174a of title 10, United States Code) or a Voluntary Separation Incentive program (under section 1175 of title 10, United States Code) by reason of the release from active duty or full-time National Guard duty, and the person shall reimburse the United States the total amount, if any, paid such person under the program before the employment begins.

number of members who possess certain military skills or are serving in designated competitive categories.

(2) Any category prescribed by the Secretary concerned for regular officers, regular enlisted members, or other members pursuant to paragraph (1) shall be consistent with the categories applicable to regular officers, regular enlisted members, or other members, respectively, under the voluntary separation incentive program under section 1175 of this title or any other program established by law or by that Secretary for the involuntary separation of such members in the administration of a reduction in force.

(3) A member of the armed forces offered a voluntary separation incentive under section 1175 of this title shall also be offered the opportunity to request separation under a program established pursuant to this section. If the Secretary concerned approves a request for separation under either such section, the member shall be separated under the authority of the section selected by such member.

(f) APPLICATION REQUIREMENTS.—(1) In order to be separated under a program established pursuant to this section—

(A) a regular enlisted member eligible for separation under that program shall—

(i) submit a request for separation under the program before the expiration of the member's term of enlistment; or

(ii) upon discharge at the end of such term, enter into a written agreement (pursuant to regulations prescribed by the Secretary concerned) not to request reenlistment in a regular component; and

(B) a member referred to in subsection (d)(3) eligible for separation under that program shall submit a request for separation to the Secretary concerned before the expiration of the member's established term of active service.

(2) For purposes of this section, the entry of a member into an agreement referred to in paragraph (1)(A)(ii) under a program established pursuant to this section shall be considered a request for separation under the program.

(g) OTHER CONDITIONS, REQUIREMENTS, AND ADMINISTRATIVE PROVISIONS.—Subsections (e) through (h), other than subsection (e)(2)(A), of section 1174 of this title shall apply in the administration of programs established under this section.

(h) TERMINATION OF PROGRAM.—(1) Except as provided in paragraph (2), the Secretary concerned may not conduct a program pursuant to this section after December 31, 2001.

(2) No member of the armed forces may be separated under a program established pursuant to this section after the date of the termination of that program.

(Added P.L. 102–190, § 661(a)(1), Dec. 5, 1991, 105 Stat. 1394; amended P.L. 102–484, § 1052(15), 4405(a), 4422(a), Oct. 23, 1992, 106 Stat. 2494, 2706, 2718; P.L. 103–160, §§ 502, 561(g), Nov. 30, 1993, 107 Stat. 1644, 1668; P.L. 103–337, § 542(b), Oct. 5, 1994, 108 Stat. 2768; P.L. 105–261, § 561(b), Oct. 17, 1998, 112 Stat. 2025; P.L. 106–398, § 1[571(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–134.)

§ 1175. Voluntary separation incentive [3]

(a)(1) Consistent with this section and the availability of appropriations for this purpose, the Secretary of Defense and the Secretary of Transportation may provide a financial incentive to members of the armed forces described in subsection (b) for voluntary appointment, enlistment, or transfer to a reserve component, requested and approved under subsection (c).

(2)(A) Except as provided in subparagraph (B), a financial incentive provided a member under this section shall be paid for the period equal to twice the number of years of service of the member, computed as provided in subsection (e)(5).

(B) If, before the expiration of the period otherwise applicable under subparagraph (A) to a member receiving a financial incentive under this section, the member is separated from a reserve component or is transferred to the Retired Reserve, the period for payment of a financial incentive to the member under this section shall terminate on the date of the separation or transfer unless—

(i) the separation or transfer is required by reason of the age or number of years of service of the member;

(ii) the separation or transfer is required by reason of the failure of selection for promotion or the medical disqualification of the member, except in a case in which the Secretary of Defense or the Secretary of Transportation determines that the basis for the separation or transfer is a result of a deliberate action taken by the member with the intent to avoid retention in the Ready Reserve or Standby Reserve; or

(iii) in the case of a separation, the member is separated from the reserve component for appointment or enlistment in or transfer to another reserve component of an armed force for service in the Ready Reserve or Standby Reserve of that armed force.

(b) The Secretary of Defense and the Secretary of Transportation may provide the incentive to a member of the armed forces if the member—

(1) has served on active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty for more than 6 but less than 20 years;

(2) has served at least 5 years of continuous active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty immediately preceding the date of separation;

(3) meets such other requirements as the Secretary may prescribe from time to time, which may include requirements relating to—

(A) years of service;

(B) skill or rating;

(C) grade or rank; and

(D) remaining period of obligated service.

(c) A member of the armed forces offered a voluntary separation incentive under this section shall be offered the opportunity to request separation under a program established pursuant to sec-

[3] For related provisions applicable to members separated under this section, see provisions set out as notes under section 1174a.

tion 1174a of this title. If the Secretary concerned approves a request for separation under either such section, the member shall be separated under the authority of the section selected by such member.

(d)(1) A member of the armed forces described in subsection (b) may request voluntary appointment, enlistment, or transfer to a reserve component accompanied by this incentive, provided the member has completed 6 years of active service.

(2) The Secretary, in his discretion, may approve or disapprove a request according to the needs of the armed forces.

(3) After December 31, 2001, the Secretary may not approve a request.

(e)[4](1) The annual payment of the incentive shall equal 2.5 percent of the monthly basic pay the member receives on the date appointed, enlisted, or transferred to the reserve component, multiplied by twelve and multiplied again by the member's years of service.

(2) A member entitled to voluntary separation incentive payments who is also entitled to basic pay for active or reserve service, or compensation for inactive duty training, may elect to have a reduction in the voluntary separation incentive payable for the same period in an amount not to exceed the amount of the basic pay or compensation received for that period.

(3)(A) A member who has received the voluntary separation incentive and who qualifies for retired or retainer pay under this title shall have deducted from each payment of such retired or retainer pay so much of such pay as is based on the service for which he received the voluntary separation incentive until the total amount deducted equals the total amount of voluntary separation incentive received. If the member elected to have a reduction in voluntary separation incentive for any period pursuant to paragraph (2), the deduction required under the preceding sentence shall be reduced accordingly.

(B) If a member is receiving simultaneous voluntary separation incentive payments and retired or retainer pay, the member may elect to terminate the receipt of voluntary separation incentive payments. Any such election is permanent and irrevocable. The rate of monthly recoupment from retired or retainer pay of voluntary separation incentive payments received after such an election shall be reduced by a percentage that is equal to a fraction with a denominator equal to the number of months that the voluntary separation incentive payments were scheduled to be paid and a numerator equal to the number of months that would not be paid as a result of the member's decision to terminate the voluntary separation incentive.

(4) A member who is receiving voluntary separation incentive payments shall not be deprived of this incentive by reason of enti-

[4] Section 662(b) of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (P.L. 102–190, 105 Stat. 1398) provides:

(b) Tax Treatment—Notwithstanding the Internal Revenue Code of 1986 and any other provision of law, any voluntary separation incentive paid to a member of the Armed Forces under section 1175 of title 10, United States Code (as added by subsection (a)), shall be includable in gross income for federal tax purposes only for the taxable year in which such incentive is paid to the participant or beneficiary of the member.

tlement to disability compensation under the laws administered by the Department of Veterans Affairs, but there shall be deducted from voluntary separation incentive payments an amount equal to the amount of any such disability compensation concurrently received. Notwithstanding the preceding sentence, no deduction may be made from voluntary separation incentive payments for any disability compensation received because of an earlier period of active duty if the voluntary separation incentive is received because of discharge or release from a later period of active duty.

(5) The years of service of a member for purposes of this section shall be computed in accordance with section 1405 of this title.

(f) The member's right to incentive payments shall not be transferable, except that the member may designate beneficiaries to receive the payments in the event of the member's death.

(g) Subject to subsection (h), payments under this provision shall be paid from appropriations available to the Department of Defense and the Department of Transportation for the Coast Guard.

(h)(1) There is established on the books of the Treasury a fund to be known as the "Voluntary Separation Incentive Fund" (hereinafter in this subsection referred to as the "Fund"). The Fund shall be administered by the Secretary of the Treasury. The Fund shall be used for the accumulation of funds in order to finance on an actuarially sound basis the liabilities of the Department of Defense under this section.

(2) There shall be deposited in the Fund the following, which shall constitute the assets of the Fund:

(A) Amounts paid into the Fund under paragraphs (5), (6), and (7).

(B) Any amount appropriated to the Fund.

(C) Any return on investment of the assets of the Fund.

(3) All voluntary separation incentive payments made by the Secretary of Defense after December 31, 1992, under this section shall be paid out of the Fund. To the extent provided in appropriation Acts, the assets of the Fund shall be available to the Secretary to pay voluntary separation incentives under this section.

(4) The Department of Defense Retirement Board of Actuaries (hereinafter in this subsection referred to as the "Board") shall perform the same functions regarding the Fund, as provided in this subsection, as such Board performs regarding the Department of Defense Military Retirement Fund.

(5) Not later than January 1, 1993, the Board shall determine the amount that is the present value, as of that date, of the future benefits payable under this section in the case of persons who are separated pursuant to this section before that date. The amount so determined is the original unfunded liability of the Fund. The Board shall determine an appropriate amortization period and schedule for liquidation of the original unfunded liability. The Secretary shall make deposits to the Fund in accordance with that amortization schedule.

(6) For persons separated under this section on or after January 1, 1993, the Secretary shall deposit in the Fund during the period beginning on that date and ending on September 30, 1999—

(A) such sums as are necessary to pay the current liabilities under this section during such period; and

(B) the amount equal to the present value, as of September 30, 1999, of the future benefits payable under this section, as determined by the Board.

(7)(A) For each fiscal year after fiscal year 1999, the Board shall—

(i) carry out an actuarial valuation of the Fund and determine any unfunded liability of the Fund which deposits under paragraphs (5) and (6) do not liquidate, taking into consideration any cumulative actuarial gain or loss to the Fund;

(ii) determine the period over which that unfunded liability should be liquidated; and

(iii) determine for the following fiscal year, the total amount, and the monthly amount, of the Department of Defense contributions that must be made to the Fund during that fiscal year in order to fund the unfunded liabilities of the Fund over the applicable amortization periods.

(B) The Board shall carry out its responsibilities for each fiscal year in sufficient time for the amounts referred to in subparagraph (A)(iii) to be included in budget requests for that fiscal year.

(C) The Secretary of Defense shall pay into the Fund at the end of each month as the Department of Defense contribution to the Fund the amount necessary to liquidate unfunded liabilities of the Fund in accordance with the amortization schedules determined by the Board.

(8) Amounts paid into the Fund under this subsection shall be paid from funds available for the pay of members of the armed forces under the jurisdiction of the Secretary of each military department.

(9) The investment provisions of section 1467 of this title shall apply to the Voluntary Separation Incentive Fund.

(i) The Secretary of Defense and the Secretary of Transportation may issue such regulations as may be necessary to carry out this section.

(j) A member of the armed forces who is provided a voluntary separation incentive under this section shall be eligible for the same benefits and services as are provided under chapter 58 of this title, sections 404 and 406 of title 37, and section 503(c) of the National Defense Authorization Act for Fiscal Year 1991 (104 Stat. 1558; 37 U.S.C. 406 note) for members of the armed forces who are involuntarily separated within the meaning of section 1141 of this title.

(Added P.L. 102–190, § 662(a)(1), Dec. 5, 1991, 105 Stat. 1396; amended P.L. 102–484, §§ 1052(16), 4405(b), 4406(b), 4422, Oct. 23, 1992, 106 Stat. 2499, 2706, 2706, 2719; P.L. 103–160, §§ 502, 561(h), Nov. 30, 1993, 107 Stat. 1644, 1668; P.L. 103–337, § 542(c), Oct. 5, 1994, 108 Stat. 2769; P.L. 105–261, § 561(b), 563(a), (b), Oct. 17, 1998, 112 Stat. 2025, 2028; P.L. 106–398, § 1[571(b), 572(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–134, 1654A–135.)

§ 1176. Enlisted members: retention after completion of 18 or more, but less than 20, years of service

(a) REGULAR MEMBERS.—A regular enlisted member who is selected to be involuntarily separated, or whose term of enlistment expires and who is denied reenlistment, and who on the date on which the member is to be discharged is within two years of quali-

fying for retirement under section 3914 or 8914 of this title, or of qualifying for transfer to the Fleet Reserve or Fleet Marine Corps Reserve under section 6330 of this title, shall be retained on active duty until the member is qualified for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve, as the case may be, unless the member is sooner retired or discharged under any other provision of law.

(b) RESERVE MEMBERS IN ACTIVE STATUS.—A reserve enlisted member serving in an active status who is selected to be involuntarily separated (other than for physical disability or for cause), or whose term of enlistment expires and who is denied reenlistment (other than for physical disability or for cause), and who on the date on which the member is to be discharged or transferred from an active status is entitled to be credited with at least 18 but less than 20 years of service computed under section 12732 of this title, may not be discharged, denied reenlistment, or transferred from an active status without the member's consent before the earlier of the following:

(1) If as of the date on which the member is to be discharged or transferred from an active status the member has at least 18, but less than 19, years of service computed under section 12732 of this title—

(A) the date on which the member is entitled to be credited with 20 years of service computed under section 12732 of this title; or

(B) the third anniversary of the date on which the member would otherwise be discharged or transferred from an active status.

(2) If as of the date on which the member is to be discharged or transferred from an active status the member has at least 19, but less than 20, years of service computed under section 12732 of this title—

(A) the date on which the member is entitled to be credited with 20 years of service computed under section 12732 of this title; or

(B) the second anniversary of the date on which the member would otherwise be discharged or transferred from an active status.

(Added P.L. 102–484, § 541(a), Oct. 23, 1992, 106 Stat. 2412; amended P.L. 103–160, § 562(a), Nov. 30, 1993, 107 Stat. 1669; P.L. 104–106, § 1501(c)(12), Feb. 10, 1996, 110 Stat. 499.)

[§ 1177. Repealed. P.L. 104–134, § 2707(a)(1), April 30, 1996, 110 Stat. 1322–345]

§ 1178. System and procedures for tracking separations resulting from refusal to participate in anthrax vaccine immunization program

(a) REQUIREMENT TO ESTABLISH SYSTEM.—The Secretary of each military department shall establish a system for tracking, recording, and reporting separations of members of the armed forces under the Secretary's jurisdiction that result from procedures initiated as a result of a refusal to participate in the anthrax vaccine immunization program.

(b) REPORT.—The Secretary of Defense shall consolidate the information recorded under the system described in subsection (a) and shall submit to the Committees on Armed Services of the Senate and the House of Representatives not later than April 1 of each year a report on such information. Each such report shall include a description of—

(1) the number of members separated, categorized by military department, grade, and active-duty or reserve status; and

(2) any other information determined appropriate by the Secretary.

(Added P.L. 106–398, § 1[751(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–193.)

CHAPTER 60—SEPARATION OF REGULAR OFFICERS FOR SUBSTANDARD PERFORMANCE OF DUTY OR FOR CERTAIN OTHER REASONS

Sec.
1181. Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons.
1182. Boards of inquiry.
[1183. Repealed.]
1184. Removal of officer: action by Secretary upon recommendation of board of inquiry.
1185. Rights and procedures.
1186. Officer considered for removal: voluntary retirement or discharge.
1187. Officers eligible to serve on boards.

§ 1181. Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons

(a) Subject to such limitations as the Secretary of Defense may prescribe, the Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record of any commissioned officer (other than a commissioned warrant officer or a retired officer) of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps to determine whether such officer shall be required, because his performance of duty has fallen below standards prescribed by the Secretary of Defense, to show cause for his retention on active duty.

(b) Subject to such limitations as the Secretary of Defense may prescribe, the Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record of any commissioned officer (other than a commissioned warrant officer or a retired officer) of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps to determine whether such officer should be required, because of misconduct, because of moral or professional dereliction, or because his retention is not clearly consistent with the interests of national security, to show cause for his retention on active duty.

(Added P.L. 96–513, § 110, Dec. 12, 1980, 94 Stat. 2872; amended P.L. 98–525, § 524(b), Oct. 19, 1984, 98 Stat. 2524.)

§ 1182. Boards of inquiry

(a) The Secretary of the military department concerned shall convene boards of inquiry at such times and places as the Secretary may prescribe to receive evidence and make findings and recommendations as to whether an officer who is required under section 1181 of this title to show cause for retention on active duty should be retained on active duty. Each board of inquiry shall be composed of not less than three officers having the qualifications prescribed by section 1187 of this title.

(b) A board of inquiry shall give a fair and impartial hearing to each officer required under section 1181 of this title to show cause for retention on active duty.

(c) If a board of inquiry determines that the officer has failed to establish that he should be retained on active duty, it shall recommend to the Secretary concerned that the officer not be retained on active duty.

(d)(1) If a board of inquiry determines that the officer has established that he should be retained on active duty, the officer's case is closed.

(2) An officer who is required to show cause for retention on active duty under subsection (a) of section 1181 of this title and who is determined under paragraph (1) to have established that he should be retained on active duty may not again be required to show cause for retention on active duty under such subsection within the one-year period beginning on the date of that determination.

(3)(A) Subject to subparagraph (B), an officer who is required to show cause for retention on active duty under subsection (b) of section 1181 of this title and who is determined under paragraph (1) to have established that he should be retained on active duty may again be required to show cause for retention at any time.

(B) An officer who has been required to show cause for retention on active duty under subsection (b) of section 1181 of this title and who is thereafter retained on active duty may not again be required to show cause for retention on active duty under such subsection solely because of conduct which was the subject of the previous proceedings, unless the findings or recommendations of the board of inquiry that considered his case are determined to have been obtained by fraud or collusion.

(Added P.L. 96–513, § 110, Dec. 12, 1980, 94 Stat. 2872; amended P.L. 105–261, § 503(b)(1), Oct. 17, 1998, 112 Stat. 2003.)

[§ 1183. Repealed. Pub. L. 105–261, § 503(a), Oct. 17, 1998, 112 Stat. 2003]

§ 1184. Removal of officer: action by Secretary upon recommendation of board of inquiry

The Secretary of the military department concerned may remove an officer from active duty if the removal of such officer from active duty is recommended by a board of inquiry convened under section 1182 of this title.

(Added P.L. 96–513, § 110, Dec. 12, 1980, 94 Stat. 2874; amended P.L. 105–261, § 503(b)(2), (c), Oct. 17, 1998, 112 Stat. 2003.)

§ 1185. Rights and procedures

(a) Under regulations prescribed by the Secretary of Defense, each officer required under section 1181 of this title to show cause for retention on active duty—

(1) shall be notified in writing, at least 30 days before the hearing of his case by a board of inquiry, of the reasons for which he is being required to show cause for retention on active duty;

(2) shall be allowed a reasonable time, as determined by the board of inquiry, to prepare his showing of cause for his retention on active duty;

(3) shall be allowed to appear in person and to be represented by counsel at proceedings before the board of inquiry; and

(4) shall be allowed full access to, and shall be furnished copies of, records relevant to his case, except that the board of inquiry shall withhold any record that the Secretary concerned determines should be withheld in the interest of national security.

(b) When a record is withheld under subsection (a)(4), the officer whose case is under consideration shall, to the extent that the interest of national security permits, be furnished a summary of the record so withheld.

(Added P.L. 96–513, § 110, Dec. 12, 1980, 94 Stat. 2874.)

§ 1186. Officer considered for removal: voluntary retirement or discharge

(a) At any time during proceedings under this chapter with respect to the removal of an officer from active duty, the Secretary of the military department concerned may grant a request by the officer—

(1) for voluntary retirement, if the officer is qualified for retirement; or

(2) for discharge in accordance with subsection (b)(2).

(b) An officer removed from active duty under section 1184 of this title shall—

(1) if eligible for voluntary retirement under any provision of law on the date of such removal, be retired in the grade and with the retired pay for which he would be eligible if retired under such provision; and

(2) if ineligible for voluntary retirement under any provision of law on the date of such removal—

(A) be honorably discharged in the grade then held, in the case of an officer whose case was brought under subsection (a) of section 1181 of this title; or

(B) be discharged in the grade then held, in the case of an officer whose case was brought under subsection (b) of section 1181 of this title.

(c) An officer who is discharged under subsection (b)(2) is entitled, if eligible therefor, to separation pay under section 1174(a)(2) of this title.

(Added P.L. 96–513, § 110, Dec. 12, 1980, 94 Stat. 2874; amended P.L. 101–510, § 501(f)(1), Nov. 5, 1990, 104 Stat. 1550.)

§ 1187. Officers eligible to serve on boards

(a) ACTIVE DUTY OFFICERS.—Except as provided in subsection (b), each board convened under this chapter shall consist of officers appointed as follows:

(1) Each member of the board shall be an officer of the same armed force as the officer being required to show cause for retention on active duty.

(2) Each member of the board shall be on the active-duty list.

(3) Each member of the board shall be in a grade above major or lieutenant commander, except that at least one member of the board shall be in a grade above lieutenant colonel or commander.

(4) Each member of the board shall be senior in grade to any officer to be considered by the board.

(b) RETIRED OFFICERS.—If qualified officers on active duty are not available in sufficient numbers to comprise a board convened under this chapter, the Secretary of the military department concerned shall complete the membership of the board by appointing to the board retired officers of the same armed force. A retired officer may be appointed to such a board only if the retired grade of that officer—

(1) is above major or lieutenant commander or, in the case of an officer to be the senior officer of the board, above lieutenant colonel or commander; and

(2) is senior to the grade of any officer to be considered by the board.

(c) INELIGIBILITY BY REASON OF PREVIOUS CONSIDERATION OF SAME OFFICER.—No person may be a member of more than one board convened under this chapter to consider the same officer.

(d) EXCLUSION FROM STRENGTH LIMITATION.—A retired general or flag officer who is on active duty for the purpose of serving on a board convened under this chapter shall not, while so serving, be counted against any limitation on the number of general and flag officers who may be on active duty.

(Added P.L. 96–513, § 110, Dec. 12, 1980, 94 Stat. 2875; amended in its entirety P.L. 106–65, § 504(a), Oct. 5, 1999, 113 Stat. 590.)

CHAPTER 61—RETIREMENT OR SEPARATION FOR PHYSICAL DISABILITY

Sec.
1201. Regulars and members on active duty for more than 30 days: retirement.
1202. Regulars and members on active duty for more than 30 days: temporary disability retired list.
1203. Regulars and members on active duty for more than 30 days: separation.
1204. Members on active duty for 30 days or less or on inactive-duty training: retirement.
1205. Members on active duty for 30 days or less: temporary disability retired list.
1206. Members on active duty for 30 days or less or on inactive-duty training: separation.
1207. Disability from intentional misconduct or willful neglect: separation.
1207a. Members with over eight years of active service: eligibility for disability retirement for pre-existing conditions.
1208. Computation of service.
1209. Transfer to inactive status list instead of separation.
1210. Members on temporary disability retired list: periodic physical examination; final determination of status.
1211. Members on temporary disability retired list: return to active duty; promotion.
1212. Disability severance pay.
1213. Effect of separation on benefits and claims.
1214. Right to full and fair hearing.
1215. Members other than Regulars: applicability of laws.
1216. Secretaries: powers, functions, and duties.
1217. Cadets, midshipmen, and aviation cadets: chapter does not apply to.
1218. Discharge or release from active duty: claims for compensation, pension, or hospitalization.
1219. Statement of origin of disease or injury: limitations.
[1220. Repealed.]
1221. Effective date of retirement or placement of name on temporary disability retired list.

§ 1201. Regulars and members on active duty for more than 30 days: retirement

(a) RETIREMENT.—Upon a determination by the Secretary concerned that a member described in subsection (c) is unfit to perform the duties of the member's office, grade, rank, or rating because of physical disability incurred while entitled to basic pay or while absent as described in subsection (c)(3), the Secretary may retire the member, with retired pay computed under section 1401 of this title, if the Secretary also makes the determinations with respect to the member and that disability specified in subsection (b).

(b) REQUIRED DETERMINATIONS OF DISABILITY.—Determinations referred to in subsection (a) are determinations by the Secretary that—

(1) based upon accepted medical principles, the disability is of a permanent nature and stable;

(2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and

(3) either—

(A) the member has at least 20 years of service computed under section 1208 of this title; or

(B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination; and either—

(i) the member has at least eight years of service computed under section 1208 of this title;

(ii) the disability is the proximate result of performing active duty;

(iii) the disability was incurred in line of duty in time of war or national emergency; or

(iv) the disability was incurred in line of duty after September 14, 1978.

(c) ELIGIBLE MEMBERS.—This section and sections 1202 and 1203 of this title apply to the following members:

(1) A member of a regular component of the armed forces entitled to basic pay.

(2) Any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 10148(a) of this title) for a period of more than 30 days.

(3) Any other member of the armed forces who is on active duty but is not entitled to basic pay by reason of section 502(b) of title 37 due to authorized absence (A) to participate in an educational program, or (B) for an emergency purpose, as determined by the Secretary concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 91; Sept. 2, 1958, P.L. 85–861, § 1(28)(A), 72 Stat. 1451; Sept. 7, 1962, P.L. 87–651, § 107(a), 76 Stat. 508; Sept. 19, 1978, P.L. 95–377, § 3(1), 92 Stat. 719; Sept. 8, 1980, P.L. 96–343, § 10(c)(1), 94 Stat. 1129; Dec. 12, 1980, P.L. 96–513, § 117, 94 Stat. 2878; Nov. 8, 1985, P.L. 99–145, § 513(a)(1)(A), 99 Stat. 627; Nov. 29, 1989, P.L. 101–189, § 1621(a)(1), 103 Stat. 1602; Oct. 5, 1994, P.L. 103–337, § 1671(c)(6), 108 Stat. 3014; Sept. 23, 1996, P.L. 104–201, § 572(a), 110 Stat. 2533.)

§ 1202. Regulars and members on active duty for more than 30 days: temporary disability retired list

Upon a determination by the Secretary concerned that a member described in section 1201(c) of this title would be qualified for retirement under section 1201 of this title but for the fact that his disability is not determined to be of a permanent nature and stable, the Secretary shall, if he also determines that accepted medical principles indicate that the disability may be of a permanent nature, place the member's name on the temporary disability retired list, with retired pay computed under section 1401 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 92; Sept. 2, 1958, P.L. 85–861, § 1(28)(A), 72 Stat. 1451; Sept. 7, 1962, P.L. 87–651, § 107(a), 76 Stat. 508; Nov. 8, 1985, P.L. 99–145, § 513(a)(1)(B), 99 Stat. 627; Oct. 5, 1994, P.L. 103–337, § 1671(c)(6), 108 Stat. 3014; Sept. 23, 1996, P.L. 104–201, § 572(b), 110 Stat. 2533.)

§ 1203. Regulars and members on active duty for more than 30 days: separation

(a) SEPARATION.—Upon a determination by the Secretary concerned that a member described in section 1201(c) of this title is unfit to perform the duties of the member's office, grade, rank, or rating because of physical disability incurred while entitled to basic pay or while absent as described in section 1201(c)(3) of this title, the member may be separated from the member's armed force, with severance pay computed under section 1212 of this title, if the Secretary also makes the determinations with respect to the member and that disability specified in subsection (b).

(b) REQUIRED DETERMINATIONS OF DISABILITY.—Determinations referred to in subsection (a) are determinations by the Secretary that—

(1) the member has less than 20 years of service computed under section 1208 of this title;

(2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence;

(3) based upon accepted medical principles, the disability is or may be of a permanent nature; and

(4) either—

(A) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and the disability was (i) the proximate result of performing active duty, (ii) incurred in line of duty in time of war or national emergency, or (iii) incurred in line of duty after September 14, 1978;

(B) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and the member has at least eight years of service computed under section 1208 of this title, or

(C) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, the disability was neither (i) the proximate result of performing active duty, (ii) incurred in line of duty in time of war or national emergency, nor (iii) incurred in line of duty after September 14, 1978, and the member has less than eight years of service computed under section 1208 of this title on the date when he would otherwise be retired under section 1201 of this title or placed on the temporary disability retired list under section 1202 of this title.

However, if the member is eligible for transfer to the inactive status list under section 1209 of this title, and so elects, he shall be transferred to that list instead of being separated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 92; Sept. 2, 1958, P.L. 85–861, § 1(28)(A), 72 Stat. 1451; Sept. 7, 1962, P.L. 87–651, § 107(a), 76 Stat. 508; Sept. 19, 1978, P.L. 95–377, § 3(2), (3), 92 Stat. 719, 720; Sept. 8, 1980, P.L. 96–343, § 10(c)(2), (3), 94 Stat. 1129; Dec. 12, 1980, Nov. 29, 1989, P.L. 96–513, § 117, 94 Stat. 2878; Nov. 29, 1989, P.L. 101–189, § 1621(a)(1), 103 Stat. 1602; Oct. 5, 1994, P.L. 103–337, § 1671(c)(6), 108 Stat. 3014; Sept. 23, 1996, P.L. 104–201, § 572(c), 110 Stat. 2533.)

§ 1204. Members on active duty for 30 days or less or on inactive-duty training: retirement

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title is unfit to perform the duties of his office, grade, rank, or rating because of physical disability, the Secretary may retire the member with retired pay computed under section 1401 of this title, if the Secretary also determines that—

(1) based upon accepted medical principles, the disability is of a permanent nature and stable;

(2) the disability—

(A) was incurred before September 24, 1996, as the proximate result of—

(i) performing active duty or inactive-duty training;

(ii) traveling directly to or from the place at which such duty is performed; or

(iii) an injury, illness, or disease incurred or aggravated while remaining overnight, immediately before the commencement of inactive-duty training, or while remaining overnight between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training, if the site of the inactive-duty training is outside reasonable commuting distance of the member's residence;

(B) is a result of an injury, illness, or disease incurred or aggravated in line of duty after September 23, 1996—

(i) while performing active duty or inactive-duty training;

(ii) while traveling directly to or from the place at which such duty is performed; or

(iii) while remaining overnight, immediately before the commencement of inactive-duty training, or while remaining overnight between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training, if the site of the inactive-duty training is outside reasonable commuting distance of the member's residence; or

(C) is a result of an injury, illness, or disease incurred or aggravated in line of duty—

(i) while the member was serving on funeral honors duty under section 12503 of this title or section 115 of title 32;

(ii) while the member was traveling to or from the place at which the member was to so serve; or

(iii) while the member remained overnight at or in the vicinity of that place immediately before so serving, if the place is outside reasonable commuting distance from the member's residence;

(3) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and

(4) either—

(A) the member has at least 20 years of service computed under section 1208 of this title; or

(B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination.

(Aug. 10, 1956, ch. 1041, 70A Stat. 93; Nov. 8, 1985, P.L. 99–145, § 513(a)(1)(A), 99 Stat. 627; Nov. 14, 1986, P.L. 99–661, § 604(d), 100 Stat. 3876; Nov. 29, 1989, P.L. 101–189, § 1621(a)(1), 103 Stat. 1602; Oct. 23, 1992, P.L. 102–484, § 516(a), 106 Stat. 2407; Sept. 23, 1996, P.L. 104–201, § 534, 110 Stat. 2521; P.L. 105–85, § 513(c)(1), (d)(1), Nov. 18, 1997, 111 Stat. 1730, 1731; P.L. 106–65, § 578(i)(4), Oct. 5, 1999, 113 Stat. 629.)

§ 1205. Members on active duty for 30 days or less: temporary disability retired list

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title would be qualified for retirement under section 1204 of this title but for the fact that his disability is not determined to be of a permanent nature and stable, the Secretary shall, if he also determines that accepted medical principles indicate that the disability may be of a permanent nature, place the member's name on the temporary disability retired list, with retired pay computed under section 1401 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 94; Nov. 8, 1985, P.L. 99–145, § 513(a)(1)(B), 99 Stat. 627; Nov. 14, 1986, P.L. 99–661, § 604(d), 100 Stat. 3876.)

§ 1206. Members on active duty for 30 days or less or on inactive-duty training: separation

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title is unfit to perform the duties of his office, grade, rank, or rating because of physical disability, the member may be separated from his armed force, with severance pay computed under section 1212 of this title, if the Secretary also determines that—

(1) the member has less than 20 years of service computed under section 1208 of this title;

(2) the disability is a result of an injury, illness, or disease incurred or aggravated in line of duty—

(A) while—

(i) performing active duty or inactive-duty training;

(ii) traveling directly to or from the place at which such duty is performed; or

(iii) remaining overnight immediately before the commencement of inactive-duty training, or while remaining overnight between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training, if the site is outside reasonable commuting distance of the member's residence; or

(B) while the member—

(i) was serving on funeral honors duty under section 12503 of this title or section 115 of title 32;

(ii) was traveling to or from the place at which the member was to so serve; or

(iii) remained overnight at or in the vicinity of that place immediately before so serving, if the place is outside reasonable commuting distance from the member's residence;

(3) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence;

(4) based upon accepted medical principles, the disability is or may be of a permanent nature; and

(5) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and, in the case of a disability incurred before the date of the enactment of the National Defense Authorization Act for Fiscal Year 2000, was the proximate result of performing active duty or inactive-duty training or of traveling directly to or from the place at which such duty is performed.

However, if the member is eligible for transfer to the inactive status list under section 1209 of this title, and so elects, he shall be transferred to that list instead of being separated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 94; Nov. 14, 1986, P.L. 99–661, § 604(d), 100 Stat. 3876; Nov. 29, 1989, P.L. 101–189, § 1621(a)(1), 103 Stat. 1602; Oct. 23, 1992, P.L. 102–484, § 516(a), 106 Stat. 2407; P.L. 105–85, § 513(c)(2), (d)(2), Nov. 18, 1997, 111 Stat. 1731; P.L. 106–65, §§ 578(i)(4), 653(c), Oct. 5, 1999, 113 Stat. 629, 667.)

§ 1207. Disability from intentional misconduct or willful neglect: separation

Each member of the armed forces who incurs a physical disability that, in the determination of the Secretary concerned, makes him unfit to perform the duties of his office, grade, rank, or rating, and that resulted from his intentional misconduct or willful neglect or was incurred during a period of unauthorized absence, shall be separated from his armed force without entitlement to any benefits under this chapter.

(Aug. 10, 1956, ch. 1041, 70A Stat. 94.)

§ 1207a. Members with over eight years of active service: eligibility for disability retirement for pre-existing conditions

(a) In the case of a member described in subsection (b) who would be covered by section 1201, 1202, or 1203 of this title but for the fact that the member's disability is determined to have been incurred before the member became entitled to basic pay in the member's current period of active duty, the disability shall be deemed to have been incurred while the member was entitled to basic pay and shall be so considered for purposes of determining whether the disability was incurred in the line of duty.

(b) A member described in subsection (a) is a member with at least eight years of active service.

(Added P.L. 106–65, § 653(a)(1), Oct. 5, 1999, 113 Stat. 666.)

§ 1208. Computation of service

(a) For the purposes of this chapter, a member of a regular component shall be credited with the service described in paragraph (1) or that described in paragraph (2), whichever is greater:

(1) The service that he is considered to have for the purpose of separation, discharge, or retirement for length of service.

(2) The sum of—

(A) his active service as a member of the armed forces, a nurse, a reserve nurse, a contract surgeon, a contract dental surgeon, or an acting dental surgeon;

(B) his active service as a member of the National Oceanic and Atmospheric Administration or the Public Health Service; and

(C) his service while participating in exercises or performing duties under sections 502, 503, 504, and 505 of title 32.

For the purpose of paragraph (2), active service as a member of the National Oceanic and Atmospheric Administration includes active service as a member of the Environmental Science Services Administration and of the Coast and Geodetic Survey.

(b) A member of the armed forces who is not a member of a regular component shall be credited, for the purposes of this chapter, with the number of years of service that he would count if he were computing his years of service under section 12733 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 94; Nov. 2, 1966, P.L. 89–718, § 8, 80 Stat. 1117; Dec. 12, 1980, P.L. 96–513, §§ 501(16), 511(42), 94 Stat. 2908, 2923; Nov. 14, 1986, P.L. 99–661, § 1343(a)(6), 100 Stat. 3992; April 21, 1987, P.L. 100–26, § 7(j)(3), 101 Stat. 283; Feb. 10, 1996, P.L. 104–106, § 1501(c)(13), 110 Stat. 499.)

§ 1209. Transfer to inactive status list instead of separation

Any member of the armed forces who has at least 20 years of service computed under section 12732 of this title, and who would be qualified for retirement under this chapter but for the fact that his disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, may elect, instead of being separated under this chapter, to be transferred to the inactive status list under section 12735 of this title and, if otherwise eligible, to receive retired pay under chapter 12739 of this title upon becoming 60 years of age.

(Aug. 10, 1956, ch. 1041, 70A Stat. 95; Nov. 29, 1989, P.L. 101–189, § 1621(a)(1), 103 Stat. 1602; Feb. 10, 1996, P.L. 104–106, § 1501(c)(14), 110 Stat. 499.)

§ 1210. Members on temporary disability retired list: periodic physical examination; final determination of status

(a) A physical examination shall be given at least once every 18 months to each member of the armed forces whose name is on the temporary disability retired list to determine whether there has been a change in the disability for which he was temporarily retired. He may be required to submit to those examinations while his name is carried on that list. If a member fails to report for an

examination under this subsection, after receipt of proper notification, his disability retired pay may be terminated. However, payments to him shall be resumed if there was just cause for his failure to report. If payments are so resumed, they may be made retroactive for not more than one year.

(b) The Secretary concerned shall make a final determination of the case of each member whose name is on the temporary disability retired list upon the expiration of five years after the date when the member's name was placed on that list. If, at the time of that determination, the physical disability for which the member's name was carried on the temporary disability retired list still exists, it shall be considered to be of a permanent nature and stable.

(c) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member's physical disability is of a permanent nature and stable and is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, his name shall be removed from the temporary disability retired list and he shall be retired under section 1201 or 1204 of this title, whichever applies.

(d) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member's physical disability is of a permanent nature and stable and is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and if he has at least 20 years of service computed under section 1208 of this title, his name shall be removed from the temporary disability retired list and he shall be retired under section 1201 or 1204 of this title, whichever applies, with retired pay computed under section 1401 of this title.

(e) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member's physical disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and if he has less than 20 years of service computed under section 1208 of this title, his name shall be removed from the temporary disability retired list and he may be separated under section 1203 or 1206 of this title, whichever applies.

(f)(1) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member is physically fit to perform the duties of his office, grade, rank, or rating, the Secretary shall—

(A) treat the member as provided in section 1211 of this title; or

(B) discharge the member, retire the member, or transfer the member to the Fleet Reserve, Fleet Marine Corps Reserve, or inactive Reserve under any other law if, under that law, the member—

(i) applies for and qualifies for that retirement or transfer; or

(ii) is required to be discharged, retired, or eliminated from an active status.

(2)(A) For the purpose of paragraph (1)(B), a member shall be considered qualified for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve or is required to be discharged, retired, or eliminated from an active status if, were the member reappointed or reenlisted under section 1211 of this title, the member would in all other respects be qualified for or would be required to be retired, transferred to the Fleet Reserve or Fleet Marine Corps Reserve, discharged, or eliminated from an active status under any other provision of law.

(B) The grade of a member retired, transferred, discharged, or eliminated from an active status pursuant to paragraph (1)(B) shall be determined under the provisions of law under which the member is retired, transferred, discharged, or eliminated. The member's retired, retainer, severance, readjustment, or separation pay shall be computed as if the member had been reappointed or reenlisted upon removal from the temporary disability retired list and before the retirement, transfer, discharge, or elimination. Notwithstanding section 8301 of title 5, a member who is retired shall be entitled to retired pay effective on the day after the last day on which the member is entitled to disability retired pay.

(g) Any member of the armed forces whose name is on the temporary disability retired list, and who is required to travel to submit to a physical examination under subsection (a), is entitled to the travel and transportation allowances authorized for members in his retired grade traveling in connection with temporary duty while on active duty.

(h) If his name is not sooner removed, the disability retired pay of a member whose name is on the temporary disability retired list terminates upon the expiration of five years after the date when his name was placed on that list.

(Aug. 10, 1956, ch. 1041, 70A Stat. 95; Nov. 8, 1985, P.L. 99–145, § 513(a)(2), 99 Stat. 627; Nov. 29, 1989, P.L. 101–189, § 1621(a)(1), 103 Stat. 1602.)

§ 1211. Members on temporary disability retired list: return to active duty; promotion

(a) With his consent, any member of the Army or the Air Force whose name is on the temporary disability retired list, and who is found to be physically fit to perform the duties of his office, grade, or rank under section 1210(f) of this title, shall—

(1) if a commissioned officer of a regular component, be recalled to active duty and, as soon as practicable, may be reappointed by the President, by and with the advice and consent of the Senate, to the active-duty list in the regular grade held by him when his name was placed on the temporary disability retired list, or in the next higher regular grade;

(2) if a warrant officer of a regular component, be recalled to active duty and, as soon as practicable, be reappointed by the Secretary concerned in the regular grade held by him when his name was placed on the temporary disability retired list, or in the next higher regular warrant grade;

(3) if an enlisted member of a regular component, be reenlisted in the regular grade held by him when his name was

placed on the temporary disability retired list or in the next higher regular enlisted grade;

(4) if a commissioned, warrant, or enlisted Reserve, be reappointed or reenlisted as a Reserve for service in his reserve component in the reserve grade held by him when his name was placed on the temporary disability retired list, or appointed or enlisted in the next higher reserve commissioned, warrant, or enlisted grade, as the case may be;

(5) if a commissioned, warrant, or enlisted member of the Army National Guard of the United States or the Air National Guard of the United States when the disability was incurred, and if he cannot be reappointed or reenlisted as a Reserve for service therein, be appointed or enlisted as a Reserve for service in the Army Reserve or the Air Force Reserve, as the case may be, in a grade corresponding to the reserve grade held by him when his name was placed on the temporary disability retired list, or in the next higher reserve commissioned, warrant, or enlisted grade, as the case may be; and

(6) if a member of the Army, or the Air Force, who has no regular or reserve grade, be reappointed or reenlisted in the Army, or the Air Force, as the case may be, in the temporary grade held by him when his name was placed on the temporary disability retired list, or appointed or enlisted in the next higher temporary grade.

(b) With his consent, any member of the naval service or of the Coast Guard whose name is on the temporary disability retired list, and who is found to be physically fit to perform the duties of his office, grade, rank, or rating under section 1210(f) of this title, shall—

(1) if he held an appointment in a commissioned grade in a regular component when his name was placed on the temporary disability retired list, be recalled to active duty and, as soon as practicable, may be reappointed by the President, by and with the advice and consent of the Senate, to his regular component in the grade permanently held by him when his name was placed on the temporary disability retired list, or in the next higher grade;

(2) if he held an appointment in the grade of warrant officer, W–1, in a regular component when his name was placed on the temporary disability retired list, be recalled to active duty and, as soon as practicable, be reappointed by the Secretary concerned in his regular component in the grade permanently held by him when his name was placed on the temporary disability retired list, or may be appointed by the President, by and with the advice and consent of the Senate, to the grade of chief warrant officer, W–2;

(3) if he held a permanent enlisted grade in a regular component when his name was placed on the temporary disability retired list, be reenlisted in his regular component in the grade permanently held by him when his name was placed on the temporary disability retired list, or in the next higher enlisted grade;

(4) if he was a member of the Fleet Reserve or the Fleet Marine Corps Reserve when his name was placed on the tem-

porary disability retired list, resume his status in the Fleet Reserve or the Fleet Marine Corps Reserve in the grade held by him when his name was placed on the temporary disability retired list, or in the next higher enlisted grade; and

(5) if a member of a reserve component be reappointed or reenlisted in his reserve component in the grade permanently held by him when his name was placed on the temporary disability retired list or, if that permanent grade is not chief petty officer or master sergeant, in the next higher grade in that reserve component.

(c) If a member is appointed, reappointed, enlisted, or reenlisted, or resumes his status in the Fleet Reserve or the Fleet Marine Corps Reserve, under subsection (a) or (b), his status on the temporary disability retired list terminates on the date of his appointment, reappointment, enlistment, reenlistment, or resumption, as the case may be. However, if such a member does not consent to the action proposed under subsection (a) or (b), and if the member is not discharged, retired, or transferred to the Fleet Reserve or Fleet Marine Corps Reserve or inactive Reserve under section 1210 of this title, his status on the temporary disability retired list and his disability retired pay shall be terminated as soon as practicable and the member shall be discharged.

(d) Disability retired pay of a member covered by this section terminates—

(1) on the date when he is recalled to active duty under subsection (a)(1) or (2) or subsection (b)(1) or (2), for an officer of a regular component;

(2) on the date when he resumes his status in the Fleet Reserve or the Fleet Marine Corps Reserve under subsection (b)(4), for a member of the Fleet Reserve or the Fleet Marine Corps Reserve; and

(3) on the date when he is appointed, reappointed, enlisted, or reenlisted, for any other member of the armed forces.

(e) Whenever seniority in grade or years of service is a factor in determining the qualifications of a member of the armed forces for promotion, each member who has been appointed, reappointed, enlisted, or reenlisted, under subsection (a) or (b), shall, when his name is placed on a lineal list, a promotion list, or any similar list, have the seniority in grade and be credited with the years of service authorized by the Secretary concerned. The authorized strength in any regular grade is automatically increased to the minimum extent necessary to give effect to each appointment made in that grade under this section. An authorized strength so increased is increased for no other purpose, and while he holds that grade the officer whose appointment caused the increase is counted for the purpose of determining when other appointments, not under this section, may be made in that grade.

(f) Action under this section shall be taken on a fair and equitable basis, with regard being given to the probable opportunities for advancement and promotion that the member might reasonably have had if his name had not been placed on the temporary disability retired list.

(Aug. 10, 1956, ch. 1041, 70A Stat. 96; Sept. 7, 1962, P.L. 87–651, § 107(b), 76 Stat. 508; Dec. 12, 1980, P.L. 96–513, § 501(17), 94 Stat. 2908; Nov. 8, 1985, P.L. 99–145, § 513(a)(3), 99 Stat. 627.)

§ 1212. Disability severance pay

(a) Upon separation from his armed force under section 1203 or 1206 of this title, a member is entitled to disability severance pay computed by multiplying (1) his years of service, but not more than 12, computed under section 1208 of this title, by (2) the highest of the following amounts:

(A) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when he is separated and (ii) in the grade and rank in which he was serving on the date when his name was placed on the temporary disability retired list, or if his name was not carried on that list, on the date when he is separated.

(B) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in any temporary grade or rank higher than that described in clause (A), in which he served satisfactorily as determined by the Secretary of the military department or the Secretary of Transportation, as the case may be, having jurisdiction over the armed force from which he is separated.

(C) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in the permanent regular or reserve grade to which he would have been promoted had it not been for the physical disability for which he is separated and which was found to exist as a result of a physical examination for promotion.

(D) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in the temporary grade or rank to which he would have been promoted had it not been for the physical disability for which he is separated and which was found to exist as a result of a physical examination for promotion, if his eligibility for promotion was required to be based on cumulative years of service or years in grade.

(b) For the purposes of subsection (a), a part of a year of active service that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

(c) The amount of disability severance pay received under this section shall be deducted from any compensation for the same disability to which the former member of the armed forces or his dependents become entitled under any law administered by the Department of Veterans Affairs. However, no deduction may be made from any death compensation to which his dependents become entitled after his death.

(Aug. 10, 1956, ch. 1041, 70A Stat. 98; Dec. 12, 1980, P.L. 96–513, § 511(43), 94 Stat. 2924; Nov. 29, 1989, P.L. 101–189, § 1621(a)(1), 103 Stat. 1602.)

§ 1213. Effect of separation on benefits and claims

Unless a person who has received disability severance pay again becomes a member of an armed force, the National Oceanic and Atmospheric Administration, or the Public Health Service, he is not entitled to any payment from the armed force from which he was separated for, or arising out of, his service before separation, under any law administered by one of those services or for it by another of those services. However, this section does not prohibit the payment of money to a person who has received disability severance pay, if the money was due him on the date of his separation or if a claim by him is allowed under any law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 99; Nov. 2, 1966, P.L. 89–718, § 8(a), 80 Stat. 1117; Dec. 12, 1980, P.L. 96–513, § 511(44), 94 Stat. 2924.)

§ 1214. Right to full and fair hearing

No member of the armed forces may be retired or separated for physical disability without a full and fair hearing if he demands it.

(Aug. 10, 1956, ch. 1041, 70A Stat. 100.)

§ 1215. Members other than Regulars: applicability of laws

The laws and regulations that entitle any retired member of a regular component of the armed forces to pay, rights, benefits, or privileges extend the same pay, rights, benefits, or privileges to any other member of the armed forces who is not a member of a regular component and who is retired, or to whom retired pay is granted, because of physical disability.

(Aug. 10, 1956, ch. 1041, 70A Stat. 100.)

§ 1216. Secretaries: powers, functions, and duties

(a) The Secretary concerned shall prescribe regulations to carry out this chapter within his department.

(b) Except as provided in subsection (d), the Secretary concerned has all powers, functions, and duties incident to the determination under this chapter of—

(1) the fitness for active duty of any member of an armed force under his jurisdiction;

(2) the percentage of disability of any such member at the time of his separation from active duty;

(3) the suitability of any member for reappointment, reenlistment, or reentry upon active duty in an armed force under his jurisdiction; and

(4) the entitlement to, and payment of, disability severance pay to any member of an armed force under his jurisdiction.

(c) The Secretary concerned or the Secretary of Veterans Affairs, as prescribed by the President, has the powers, functions, and duties under this chapter incident to hospitalization, reexaminations, and the payment of disability retired pay within his department or agency.

(d) The Secretary concerned may not, with respect to any member who is a general officer or flag officer or is a medical officer being processed for retirement under any provisions of this title by reason of age or length of service—

(1) retire such member under section 1201 of this title;

(2) place such member on the temporary disability retired list pursuant to section 1202 of this title; or

(3) separate such member from an armed force pursuant to section 1203 of this title

by reason of unfitness to perform the duties of his office, grade, rank, or rating unless the determination of the Secretary concerned with respect to unfitness is first approved by the Secretary of Defense on the recommendation of the Assistant Secretary of Defense for Health Affairs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 100; Mar. 4, 1976, P.L. 94–225, § 2(a), 90 Stat. 202; Dec. 12, 1980, P.L. 96–513, § 511(45), 94 Stat. 2924; Oct. 19, 1984, P.L. 98–525, § 1405(25), 98 Stat. 2623; Nov. 14, 1986, P.L. 99–661, § 1343(a)(7), 100 Stat. 3992; Nov. 29, 1989, P.L. 101–189, § 1621(a)(2), 103 Stat. 1603.)

§ 1217. Cadets, midshipmen, and aviation cadets: chapter does not apply to

This chapter does not apply to cadets at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, or to midshipmen of the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 100; Sept. 2, 1958, P.L. 85–861, § 33(a)(7), 72 Stat. 1564.)

§ 1218. Discharge or release from active duty: claims for compensation, pension, or hospitalization

(a) A member of an armed force may not be discharged or released from active duty because of physical disability until he—

(1) has made a claim for compensation, pension, or hospitalization, to be filed with the Department of Veterans Affairs, or has refused to make such a claim; or

(2) has signed a statement that his right to make such a claim has been explained to him, or has refused to sign such a statement.

(b) A right that a member may assert after failing or refusing to sign a claim, as provided in subsection (a), is not affected by that failure or refusal.

(c) This section does not prevent the immediate transfer of a member to a facility of the Department of Veterans Affairs for necessary hospital care.

(Added P.L. 85–56, § 2201(31)(A), June 17, 1957, 71 Stat. 160; amended P.L. 87–651, § 107(c), Sept. 7, 1962, 76 Stat. 508; P.L. 101–189, § 1621(a)(1), (4), Nov. 29, 1989, 103 Stat. 1602, 1603.)

§ 1219. Statement of origin of disease or injury: limitations

A member of an armed force may not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury that he has. Any such statement against his interests, signed by a member, is invalid.

(Added P.L. 85–86, § 2201(31)(A), June 17, 1957, 71 Stat. 160; amended P.L. 87–651, § 107(c), Sept. 7, 1962, 76 Stat. 509.)

[§ 1220. Repealed. P.L. 87–651, § 107(d), Sept. 7, 1962, 76 Stat. 509]

§ 1221. Effective date of retirement or placement of name on temporary disability retired list

Notwithstanding section 8301 of title 5, the Secretary concerned may specify an effective date for the retirement of any member of the armed forces under this chapter, or for the placement of his name on the temporary disability retired list, that is earlier than the date provided for in that section.

(Added P.L. 85–861, § 1(28)(B), Sept. 2, 1958, 72 Stat. 1451; amended P.L. 89–718, § 3, Nov. 2, 1966, 80 Stat. 1115.)

CHAPTER 63—RETIREMENT FOR AGE

Sec.
1251. Age 62: regular commissioned officers; exceptions.
[1255. Repealed.]
1263. Age 62: warrant officers.
1275. Computation of retired pay: law applicable.

§ 1251. Age 62: regular commissioned officers; exceptions

(a) Unless retired or separated earlier, each regular commissioned officer of the Army, Navy, Air Force, or Marine Corps (other than an officer who is a permanent professor, director of admissions, or registrar of the United States Military Academy or United States Air Force Academy or a commissioned warrant officer) shall be retired on the first day of the month following the month in which he becomes 62 years of age. An officer who is a permanent professor at the United States Military Academy or United States Air Force Academy, the director of admissions at the United States Military Academy, or the registrar of the United States Air Force Academy shall be retired on the first day of the month following the month in which he becomes 64 years of age.

(b) Notwithstanding subsection (a), the President may defer the retirement of an officer serving in a position that carries a grade above major general or rear admiral, but such a deferment may not extend beyond the first day of the month following the month in which the officer becomes 64 years of age. Not more than ten deferments of retirement under this subsection may be in effect at any one time.

(c)(1) The Secretary concerned may defer the retirement under subsection (a) of a health professions officer if during the period of the deferment the officer will be performing duties consisting primarily of providing patient care or performing other clinical duties.

(2) The Secretary concerned may defer the retirement under subsection (a) of an officer who is appointed or designated as a chaplain if the Secretary determines that such deferral is in the best interest of the military department concerned.

(3)(A) Except as provided in subparagraph (B), a deferment under this subsection may not extend beyond the first day of the month following the month in which the officer becomes 68 years of age.

(B) The Secretary concerned may extend a deferment under this subsection beyond the day referred to in subparagraph (A) if the Secretary determines that extension of the deferment is necessary for the needs of the military department concerned. Such an extension shall be made on a case-by-case basis and shall be for such period as the Secretary considers appropriate.

(4) For purposes of this subsection, a health professions officer is—

(A) a medical officer;

(B) a dental officer; or

(C) an officer in the Army Nurse Corps, an officer in the Navy Nurse Corps, or an officer in the Air Force designated as a nurse.

(d) The Secretary concerned may defer the retirement under subsection (a) of an officer who is the Chief of Chaplains or Deputy Chief of Chaplains of that officer's armed force. Such a deferment may not extend beyond the first day of the month following the month in which the officer becomes 68 years of age.

(Added P.L. 96–513, § 111, Dec. 12, 1980, 94 Stat. 2875; amended P.L. 100–180, § 719, Dec. 4, 1987, 101 Stat. 1115; P.L. 101–189, § 709, Nov. 29, 1989, 103 Stat. 1476; P.L. 105–85, § 504(a), (b), Nov. 18, 1997, 111 Stat. 1725.)

[§ 1255. Repealed. P.L. 90–130, § 1(6), Nov. 8, 1967, 81 Stat. 374]

§ 1263. Age 62: warrant officers

(a) Unless retired under section 1305 of this title, a permanent regular warrant officer who has at least 20 years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114; 10 U.S.C. 580 note), and who is at least 62 years of age, shall be retired 60 days after he becomes that age, except as provided by section 8301 of title 5.

(b) The Secretary concerned may defer, for not more than four months, the retirement under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to retire under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 101; Nov. 2, 1966, P.L. 89–718, § 3, 80 Stat. 1115; Nov. 8, 1967, P.L. 90–130, § 1(6), 81 Stat. 374; Dec. 12, 1980, P.L. 96–513, § 511(46), 94 Stat. 2924; Oct. 23, 1992, P.L. 102–484, § 1052(17), 106 Stat. 2500.)

§ 1275. Computation of retired pay: law applicable

A member of the armed forces retired under this chapter is entitled to retired pay computed under chapter 71 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 101.)

CHAPTER 65—RETIREMENT OF WARRANT OFFICERS FOR LENGTH OF SERVICE

Sec.
1293. Twenty years or more: warrant officers.
1305. Thirty years or more: regular warrant officers.
1315. Computation of retired pay: law applicable.

§ 1293. Twenty years or more: warrant officers [1]

The Secretary concerned may, upon the warrant officer's request, retire a warrant officer of any armed force under his jurisdiction who has at least 20 years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114).

(Aug. 10, 1956, ch. 1041, 70A Stat. 101; Sept. 7, 1962, P.L. 87–649, § 6(f)(3), 76 Stat. 494.)

§ 1305. Thirty years or more: regular warrant officers

(a)(1) Except as provided in paragraph (2), a regular warrant officer (other than a regular Army warrant officer in the grade of chief warrant officer, W–5) who has at least 30 years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114) shall be retired 60 days after he completes that service, except as provided by section 8301 of title 5.

(2)(A) A regular Army warrant officer in the grade of chief warrant officer, W–5, who has at least 30 years of active service as a warrant officer that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114), shall be retired 60 days after the date on which he completes that service, except as provided by section 8301 of title 5.

(B) A regular Army warrant officer in a warrant officer grade below the grade of chief warrant officer, W–5, who completes 24 years of active service as a warrant officer before he is required to be retired under paragraph (1) shall be retired 60 days after the date on which he completes 24 years of active service as a warrant officer, except as provided by section 8301 of title 5.

(b) The Secretary concerned may defer, for not more than four months, the retirement under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to retire under this section.

[1] Section 4403 of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 102–484, 106 Stat. 2702), as amended (providing the Secretary of Defense with a temporary additional force management tool to effect the drawdown of military forces through 2001 by authorizing the retirement, through December 31, 2001, of officers with at least 15, but less than 20 years of service) is set out at the end of this chapter.

(c) Under such regulations as he may prescribe, the Secretary concerned may defer the retirement under subsection (a) of any warrant officer upon the recommendation of a board of officers and with the consent of the warrant officer, but not later than 60 days after he becomes 62 years of age.

(Aug. 10, 1956, ch. 1041, 70A Stat. 101; Sept. 7, 1962, P.L. 87–649, § 6(f)(3), 76 Stat. 494; Nov. 2, 1966, P.L. 89–718, § 3, 80 Stat. 1115; Dec. 5, 1991, P.L. 102–190, § 1116, 105 Stat. 1503.)

§ 1315. Computation of retired pay: law applicable

A member of the armed forces retired under this chapter is entitled to retired pay computed under chapter 71 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 101.)

Section 4403 of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 102–484), as amended (authorizing temporary early retirement authority during the force reduction transition for officers on active duty), provides:

SEC. 4403. TEMPORARY EARLY RETIREMENT AUTHORITY.

(a) PURPOSE.—The purpose of this section is to provide the Secretary of Defense a temporary additional force management tool with which to effect the drawdown of military forces during the active force drawdown perid.

(b) RETIREMENT FOR 15 TO 20 YEARS OF SERVICE.—(1) During the active force drawdown period, the Secretary of the Army may—

(A) apply the provisions of section 3911 of title 10, United States Code, to a regular or reserve commissioned officer with at least 15 but less than 20 years of service by substituting "at least 15 years" for "at least 20 years" in subsection (a) of that section;

(B) apply the provisions of section 3914 of such title to an enlisted member with at least 15 but less than 20 years of service by substituting "at least 15" for "at least 20"; and

(C) apply the provisions of section 1293 of such title to a warrant officer with at least 15 but less than 20 years of service by substituting "at least 15 years" for "at least 20 years".

(2) During the active force drawdown period, the Secretary of the Navy may—

(A) apply the provisions of section 6323 of title 10, United States Code, to an officer with at least 15 but less than 20 years of service by substituting "at least 15 years" for "at least 20 years" in subsection (a) of that section;

(B) apply the provisions of section 6330 of such title to an enlisted member of the Navy or Marine Corps with at least 15 but less than 20 years of service by substituting "15 or more years" for "20 or more years" in the first sentence of subsection (a), in the case of an enlisted member of the Navy, and in the second sentence of subsection (b), in the case of an enlisted member of the Marine Corps; and

(C) apply the provisions of section 1293 of such title to a warrant officer with at least 15 but less than 20 years of service by substituting "at least 15 years" for "at least 20 years".

(3) During the active force drawdown period, the Secretary of the Air Force may—

(A) apply the provisions of section 8911 of title 10, United States Code, to a regular or reserve commissioned officer with at least 15 but less than 20 years of service by substituting "at least 15 years" for "at least 20 years" in subsection (a) of that section; and

(B) apply the provisions of section 8914 of such title to an enlisted member with at least 15 but less than 20 years of service by substituting "at least 15" for "at least 20".

(c) ADDITIONAL ELIGIBILITY REQUIREMENT.—In order to be eligible for retirement by reason of the authority provided in subsection (b), a member of the Armed Forces shall—

(1) register on the registry maintained under section 1143a(b) of title 10, United States Code (as added by section 4462(a)); and

(2) receive information regarding public and community service job opportunities from the Secretary of Defense or another source approved by the Secretary and be afforded, on request, counseling on such job opportunities.

(d) REGULATIONS.—The Secretary of each military department may prescribe regulations and policies regarding the criteria for eligibility for early retirement by reason of eligibility pursuant to this section and for the approval of applications for such retirement. Such criteria may include factors such as grade, years of service, and skill.

(e) COMPUTATION OF RETIRED PAY.—Retired or retainer pay of a member retired (or transferred to the Fleet Reserve or Fleet Marine Corps Reserve) under a provision of title 10, United States Code, by reason of eligibility pursuant to subsection (b) shall be reduced by 1/12th of 1 percent for each full month by which the number of months of active service of the member are less than 240 as of the date of the member's retirement (or transfer to the Fleet Reserve or Fleet Marine Corps Reserve).

(f) FUNDING.—(1) Notwithstanding section 1463 of title 10, United States Code, and subject to the availability of appropriations for this purpose, the Secretary of each military department shall provide in accordance with this section for the payment of retired pay payable during the fiscal years covered by the other provisions of this subsection to members of the Armed Forces under the jurisdiction of that Secretary who are being retired under the authority of this section.

(2) In each fiscal year in which the Secretary of a military department retires a member of the Armed Forces under the authority of this section, the Secretary shall credit to a subaccount (which the Secretary shall establish) within the appropriation account for that fiscal year for pay and allowances of active duty members of the Armed Forces under the jurisdiction of that Secretary such amount as is necessary to pay the retired pay payable to such member for the entire initial period (determined under paragraph (3)) of the entitlement of that member to receive retired pay.

(3) The initial period applicable under paragraph (2) in the case of a retired member referred to in that paragraph is the number of years (and any fraction of a year) that is equal to the difference between 20 years and the number of years (and any fraction of a year) of service that were completed by the member (as computed under the provision of law used for determining the member's years of service for eligibility to retirement) before being retired under the authority of this section.

(4) The Secretary shall pay the member's retired pay for such initial period out of amounts credited to the subaccount under paragraph (2). The amounts so credited with respect to that member shall remain available for payment for that period.

(5) For purposes of this subsection—

(A) the transfer of an enlisted member of the Navy or Marine Corps to the Fleet Reserve or Fleet Marine Corps Reserve shall be treated as a retirement; and

(B) the term "retired pay" shall be treated as including retainer pay.

(g) COORDINATION WITH OTHER SEPARATION PROVISIONS.—(1) A member of the Armed Forces retired under the authority of this section is not entitled to benefits under section 1174, 1174a, or 1175 of title 10, United States Code.

(2) [Amendatory provision omitted.]

(h) MEMBERS RECEIVING SSB OR VSI.—The Secretary of a military department may retire (or transfer to the Fleet Reserve or Fleet Marine Corps Reserve) pursuant to the authority provided by this section a member of a reserve component who before [Oct. 23, 1992] was separated from active duty pursuant to an agreement entered into under section 1174a or 1175 of title 10, United States Code. The retired or retainer pay of any such member so retired (or transferred) by reason of the authority provided in this section shall be reduced by the amount of any payment to such member before the date of such retirement under the provisions of such agreement under section 1174a or 1175 of title 10, United States Code.

(i) ACTIVE FORCE DRAWDOWN PERIOD.—For purposes of this section, the active force drawdown period is the period beginning on [Oct. 23, 1992,] and ending on December 31, 2001.

Section 542(d) of the National Defense Authorization Act for Fiscal Year 1995 (P.L. 103–337; 108 Stat. 2769) (extending temporary early retirement authority under section 4403 to the Coast Guard) provides:

(d) TEMPORARY EARLY RETIREMENT AUTHORITY.—Section 4403 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2702; 10 U.S.C. 1293 note) shall apply to the Coast Guard in the same manner and

to the same extent as that provision applies to the Department of Defense. The Secretary of Transportation shall implement the provisions of that section with respect to the Coast Guard and apply the applicable provisions of title 14, United States Code, relating to retirement of Coast Guard personnel.

Section 566(c) of the National Defense Authorization Act for Fiscal Year 1996 (P.L. 104–106; 110 Stat. 328) (extending temporary early retirement authority under section 4403 to the commissioned office corps of the National Oceanic and Atmospheric Administration) provides:

(c) TEMPORARY EARLY RETIREMENT AUTHORITY.—Section 4403 (other than subsection (f)) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2702; 10 U.S.C. 1293 note) shall apply to the commissioned officer corps of the National Oceanic and Atmospheric Administration in the same manner and to the same extent as that section applies to the Department of Defense. The Secretary of Commerce shall implement the provisions of that section with respect to such commissioned officer corps and shall apply the provisions of that section to the provisions of the Coast and Geodetic Survey Commissioned Officers' Act of 1948 relating to the retirement of members of such commissioned officer corps.

CHAPTER 67—RETIRED PAY FOR NON-REGULAR SERVICE

Sec.
1331. Reference to chapter 1223.
[1331a to 1338. Transferred.]

§ 1331. Reference to chapter 1223

Provisions of law relating to retired pay for nonregular service are set forth in chapter 1223 of this title (beginning with section 12731).

(Added P.L. 103–337, § 1662(j)(7), Oct. 5, 1994, 108 Stat. 3005.)

[Former § 1331 and §§ 1331a to 1338 transferred to §§ 12731 to 12738]

CHAPTER 69—RETIRED GRADE

Sec.
1370. Commissioned officers: general rule; exceptions.
1371. Warrant officers: general rule.
1372. Grade on retirement for physical disability: members of armed forces.
1373. Higher grade for later physical disability: retired officers recalled to active duty.
[1374. Repealed.]
1375. Entitlement to commission: commissioned officers advanced on retired list.
1376. Temporary disability retired lists.

§ 1370. Commissioned officers: general rule; exceptions

(a) RULE FOR RETIREMENT IN HIGHEST GRADE HELD SATISFACTORILY.—(1) Unless entitled to a higher retired grade under some other provision of law, a commissioned officer (other than a commissioned warrant officer) of the Army, Navy, Air Force, or Marine Corps who retires under any provision of law other than chapter 61 or chapter 1223 of this title shall, except as provided in paragraph (2), be retired in the highest grade in which he served on active duty satisfactorily, as determined by the Secretary of the military department concerned, for not less than six months.

(2)(A) In order to be eligible for voluntary retirement under any provision of this title in a grade above major or lieutenant commander, a commissioned officer of the Army, Navy, Air Force, or Marine Corps must have served on active duty in that grade for not less than three years, except that the Secretary of Defense may authorize the Secretary of a military department to reduce such period to a period not less than two years in the case of retirements effective during the period beginning on October 1, 1990, and ending on December 31, 2001.

(B) The President may waive subparagraph (A) in individual cases involving extreme hardship or exceptional or unusual circumstances. The authority of the President under the preceding sentence may not be delegated.

(C) In the case of a grade below the grade of lieutenant general or vice admiral, the number of members of one of the armed forces in that grade for whom a reduction is made during any fiscal year in the period of service-in-grade otherwise required under this paragraph may not exceed the number equal to two percent of the authorized active-duty strength for that fiscal year for officers of that armed force in that grade.

(3) A reserve or temporary officer who is notified that he will be released from active duty without his consent and thereafter requests retirement under section 3911, 6323, or 8911 of this title and is retired pursuant to that request is considered for purposes of this section, to have been retired involuntarily. An officer retired pursuant to section 1186(b)(1) of this title is considered for purposes of this section to have been retired voluntarily.

(b) RETIREMENT IN NEXT LOWER GRADE.—An officer whose length of service in the highest grade he held while on active duty does not meet the service in grade requirements specified in subsection (a) shall be retired in the next lower grade in which he served on active duty satisfactorily, as determined by the Secretary of the military department concerned, for not less than six months.

(c) OFFICERS IN O–9 AND O–10 GRADES.—(1) An officer who is serving in or has served in the grade of general or admiral or lieutenant general or vice admiral may be retired in that grade under subsection (a) only after the Secretary of Defense certifies in writing to the President and Congress that the officer served on active duty satisfactorily in that grade.

(2) In the case of an officer covered by paragraph (1), the three-year service-in-grade requirement in paragraph (2)(A) of subsection (a) may not be reduced or waived under that subsection—

(A) while the officer is under investigation for alleged misconduct; or

(B) while there is pending the disposition of an adverse personnel action against the officer for alleged misconduct.

(d) RESERVE OFFICERS.—(1) Unless entitled to a higher grade, or to credit for satisfactory service in a higher grade, under some other provision of law, a person who is entitled to retired pay under chapter 1223 of this title shall, upon application under section 12731 of this title, be credited with satisfactory service in the highest grade in which that person served satisfactorily at any time in the armed forces, as determined by the Secretary concerned in accordance with this subsection.

(2) In order to be credited with satisfactory service in an officer grade (other than a warrant officer grade) below the grade of lieutenant colonel or commander, a person covered by paragraph (1) must have served satisfactorily in that grade (as determined by the Secretary of the military department concerned) as a reserve commissioned officer in an active status, or in a retired status on active duty, for not less than six months.

(3)(A) In order to be credited with satisfactory service in an officer grade above major or lieutenant commander, a person covered by paragraph (1) must have served satisfactorily in that grade (as determined by the Secretary of the military department concerned) as a reserve commissioned officer in an active status, or in a retired status on active duty, for not less than three years.

(B) A person covered by subparagraph (A) who has completed at least six months of satisfactory service in grade and is transferred from an active status or discharged as a reserve commissioned officer solely due to the requirements of a nondiscretionary provision of law requiring that transfer or discharge due to the person's age or years of service may be credited with satisfactory service in the grade in which serving at the time of such transfer or discharge, notwithstanding failure of the person to complete three years of service in that grade.

(C) If a person covered by subparagraph (A) has completed at least six months of satisfactory service in grade, the person was serving in that grade while serving in a position of adjutant general required under section 314 of title 32 or while serving in a position of assistant adjutant general subordinate to such a position of adjutant general, and the person has failed to complete three years of service in that grade solely because the person's appointment to such position has been terminated or vacated as described in section 324(b) of such title, then such person may be credited with satisfactory service in that grade, notwithstanding the failure to complete three years of service in that grade.

(D) To the extent authorized by the Secretary of the military department concerned, a person who, after having been recommended for promotion in a report of a promotion board but before being promoted to the recommended grade, served in a position for which that grade is the minimum authorized grade may be credited for purposes of subparagraph (A) as having served in that grade for the period for which the person served in that position while in the next lower grade. The period credited may not include any period before the date on which the Senate provides advice and consent for the appointment of that person in the recommended grade.

(E) To the extent authorized by the Secretary of the military department concerned, a person who, after having been found qualified for Federal recognition in a higher grade by a board under section 307 of title 32, serves in a position for which that grade is the minimum authorized grade and is appointed as a reserve officer in that grade may be credited for the purposes of subparagraph (A) as having served in that grade. The period of the service for which credit is afforded under the preceding sentence may only be the period for which the person served in the position after the Senate provides advice and consent for the appointment.

(F) A person covered by subparagraph (A) who has completed at least six months of satisfactory service in a grade above colonel or (in the case of the Navy) captain and, while serving in an active status in such grade, is involuntarily transferred (other than for cause) from active status may be credited with satisfactory service in the grade in which serving at the time of such transfer, notwithstanding failure of the person to complete three years of service in that grade.

(4) A person whose length of service in the highest grade held does not meet the service in grade requirements specified in this subsection shall be credited with satisfactory service in the next lower grade in which that person served satisfactorily (as determined by the Secretary of the military department concerned) for not less than six months.

(5) The Secretary of Defense may authorize the Secretary of a military department to reduce the 3-year period required by paragraph (3)(A) to a period not less than 2 years in the case of retirements effective during the period beginning on October 17, 1998, and ending on December 31, 2001. The number of reserve commissioned officers of an armed force in the same grade for whom a reduction is made during any fiscal year in the period of service-in-grade otherwise required under this paragraph may not exceed

the number equal to 2 percent of the strength authorized for that fiscal year for reserve commissioned officers of that armed force in an active status in that grade.

(Added P.L. 96–513, § 112, Dec. 12, 1980, 94 Stat. 2876; amended P.L. 101–510, § 522, Nov. 5, 1990, 104 Stat. 1561; P.L. 103–160, § 561(d), Nov. 30, 1993, 107 Stat. 1668; P.L. 103–337, §§ 1641, 1671(c)(7)(B), Oct. 5, 1994, 108 Stat. 2968, 3014; P.L. 104–106, § 502(a)–(b), (f)–(g), Feb. 10, 1996, 110 Stat. 293; P.L. 104–201, § 544(a), Sept. 23, 1996, 110 Stat. 2522; P.L. 105–261, §§ 512(a), 513(a), 561(d), (o), Oct. 17, 1998, 112 Stat. 2007, 2025, 2026; P.L. 106–65, § 1066(a)(9), (b)(3), Oct. 5, 1999, 113 Stat. 770, 772; P.L. 106–398, § 1[571(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–134.)

§ 1371. Warrant officers: general rule

Unless entitled to a higher retired grade under some other provision of law, a warrant officer retires, as determined by the Secretary concerned, in the permanent regular or reserve warrant officer grade, if any, that he held on the day before the date of his retirement, or in any higher warrant officer grade in which he served on active duty satisfactorily, as determined by the Secretary, for a period of more than 30 days.

(Aug. 10, 1956, ch. 1041, 70A Stat. 104.)

§ 1372. Grade on retirement for physical disability: members of armed forces

Unless entitled to a higher retired grade under some other provision of law, any member of an armed force who is retired for physical disability under section 1201 or 1204 of this title, or whose name is placed on the temporary disability retired list under section 1202 or 1205 of this title, is entitled to the grade equivalent to the highest of the following:

(1) The grade or rank in which he is serving on the date when his name is placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is retired.

(2) The highest temporary grade or rank in which he served satisfactorily, as determined by the Secretary of the armed force from which he is retired.

(3) The permanent regular or reserve grade to which he would have been promoted had it not been for the physical disability for which he is retired and which was found to exist as a result of a physical examination.

(4) The temporary grade to which he would have been promoted had it not been for the physical disability for which he is retired, if eligibility for that promotion was required to be based on cumulative years of service or years of service in grade and the disability was discovered as a result of a physical examination.

(Aug. 10, 1956, ch. 1041, 70A Stat. 105; Sept. 23, 1996, P.L. 104–201, § 577, 110 Stat. 2536.)

§ 1373. Higher grade for later physical disability: retired officers recalled to active duty

Unless entitled to a higher retired grade under some other provision of law, a member of an armed force whose retired pay is computed under section 1402(d) or 1402a(d) of this title is entitled, upon his release from active duty, to the grade equivalent to the

grade or rank upon which his retired pay is based under that section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 105; Sept. 8, 1980, P.L. 96–342, § 813(b)(3)(C), 94 Stat. 1104.)

[§ 1374. Repealed. P.L. 103–337, § 1662(k)(2), Oct. 5, 1994, 108 Stat. 3006]

§ 1375. Entitlement to commission: commissioned officers advanced on retired list

A commissioned officer of the Army, Navy, Air Force, or Marine Corps who is advanced on a retired list is entitled to a commission in the grade to which he is advanced.

(Aug. 10, 1956, ch. 1041, 70A Stat. 105.)

§ 1376. Temporary disability retired lists

The Secretary concerned shall maintain a temporary disability retired list containing the names of members of the armed forces under his jurisdiction placed thereon under sections 1202 and 1205 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 105; Sept. 2, 1958, P.L. 85–861, § 1 (31), 72 Stat. 1451; Oct. 5, 1994, P.L. 103–337, § 1662(k)(3), 108 Stat. 3006.)

CHAPTER 71—COMPUTATION OF RETIRED PAY

Sec.
1401. Computation of retired pay.
1401a. Adjustment of retired pay and retainer pay to reflect changes in Consumer Price Index.
1402. Recomputation of retired or retainer pay to reflect later active duty of members who first became members before September 8, 1980.
1402a. Recomputation of retired or retainer pay to reflect later active duty of members who first became members after September 7, 1980.
1403. Disability retired pay; treatment under Internal Revenue Code of 1986.
1404. Applicability of section 8301 of title 5.
1405. Years of service.
1406. Retired pay base for members who first became members before September 8, 1980: final basic pay.
1407. Retired pay base for members who first became members after September 7, 1980: high-36 month average.
1408. Payment of retired or retainer pay in compliance with court orders.
1409. Retired pay multiplier.
1410. Restoral of full retirement amount at age 62 for certain members entering on or after August 1, 1986.
1411. Rules of construction.
1412. Rounding to next lower dollar.
1413. Special compensation for certain severely disabled uniformed services retirees.

§ 1401. Computation of retired pay

(a) DISABILITY, NON-REGULAR SERVICE, WARRANT OFFICER, AND DOPMA RETIREMENT.—The monthly retired pay of a person entitled thereto under this subtitle is computed according to the following table. For each case covered by a section of this title named in the column headed "For sections", retired pay is computed by taking, in order, the steps prescribed opposite it in columns 1, 2, 3, and 4, as modified by the applicable footnotes.

Formula No.	For sections	Column 1 Take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
1	1201 1204	Retired pay base as computed under section 1406(b) or 1407.	As member elects— (1) 2½% of years of service credited to him under section 1208;[1] or (2) the percentage of disability on date when retired.		Excess over 75% of retired pay base upon which computation is based.
2	1202 1205	Retired pay base as computed under section 1406(b) or 1407.	As member elects— (1) 2½% of years of service credited to him under section 1208;[1] or (2) the percentage of disability on date when his name was placed on temporary disability retired list.	Amount necessary to increase product of columns 1 and 2 to 50% of retired pay base upon which computation is based.	Excess over 75% of retired pay base upon which computation is based.
4	580 1263 1293 1305	Retired pay base as computed under section 1406(b) or 1407.	The retired pay multiplier prescribed in section 1409(a) for the years of service credited to him under section 1405.		
5	633 634 635 636 1251	Retired pay base as computed under section 1406(b) or 1407.	The retired pay multiplier prescribed in section 1409(a) for the years of service credited to him under section 1405.		

[1] Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

(b) USE OF MOST FAVORABLE FORMULA.—If a person would otherwise be entitled to retired pay computed under more than one formula of the table in subsection (a) or of any other provision of law, the person is entitled to be paid under the applicable formula that is most favorable to him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 106; May 20, 1958, P.L. 85–422, §§ 6(7), 11(a)(2), 72 Stat. 129, 131; Oct. 2, 1963, P.L. 88–132, § 5(h)(1), 77 Stat. 214; Aug. 21, 1965, P.L. 89–132, § 6, 79 Stat. 547; Dec. 16, 1967, P.L. 90–207, § 3(1), 81 Stat. 653; Oct. 2, 1972, P.L. 92–455, § 1, 86 Stat. 761; Sept. 8, 1980, P.L. 96–342, § 813(b)(1), 94 Stat. 1102; Dec. 12, 1980, P.L. 96–513, § 113(a), § 511(49), 94 Stat. 2876, 2924; Sept. 24, 1983, P.L. 98–94, § 922, 923, 97 Stat. 641, 642; Oct. 30, 1984, P.L. 98–557, § 35(b), 98 Stat. 2877; P.L. July 1, 1986, 99–348, § 201(a), 100 Stat. 691; Oct. 23, 1992, P.L. 102–484, § 1050(18), 106 Stat. 2500; Oct. 5, 1994, P.L. 103–337, § 1662(j)(2), 108 Stat. 3004.)

§ 1401a. Adjustment of retired pay and retainer pay to reflect changes in Consumer Price Index

(a) PROHIBITION ON RECOMPUTATION TO REFLECT INCREASES IN BASIC PAY.—Unless otherwise specifically provided by law, the retired pay of a member or former member of an armed force may not be recomputed to reflect any increase in the rates of basic pay for members of the armed forces.

(b) COST-OF-LIVING ADJUSTMENTS BASED ON CPI INCREASES.—

(1) INCREASE REQUIRED.—Effective on December 1 of each year, the Secretary of Defense shall increase the retired pay of members and former members entitled to that pay in accordance with paragraphs (2) and (3).

(2) PERCENTAGE INCREASE.—Except as otherwise provided in this subsection, the Secretary shall increase the retired pay of each member and former member by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

(A) the price index for the base quarter of that year, exceeds

(B) the base index.

(3) REDUCED PERCENTAGE FOR CERTAIN POST-AUGUST 1, 1986 MEMBERS.—If the percent determined under paragraph (2) is greater than 1 percent, the Secretary shall increase the retired pay of each member and former member who first became a member on or after August 1, 1986, and has elected to receive a bonus under section 322 of title 37, by the difference between—

(A) the percent determined under paragraph (2); and

(B) 1 percent.

(4) SPECIAL RULE FOR PARAGRAPH (3).—If in any case in which an increase in retired pay that would otherwise be made under paragraph (3) is not made by reason of law (other than any provision of this section), then (unless otherwise provided by law) when the next increase in retired pay is made under this subsection, the increase under paragraph (3) shall be carried out so as to achieve the same net increase in retired pay under that paragraph that would have been the case if that law had not been enacted.

(5) REGULATIONS.—Any increase in retired pay under this subsection shall be made in accordance with regulations prescribed by the Secretary of Defense.

(c) FIRST COLA ADJUSTMENT FOR MEMBERS WITH RETIRED PAY COMPUTED USING FINAL BASIC PAY.—

(1) FIRST ADJUSTMENT WITH INTERVENING INCREASE IN BASIC PAY.—Notwithstanding subsection (b), if a person described in paragraph (3) becomes entitled to retired pay based on rates of monthly basic pay that became effective after the last day of the calendar quarter of the base index, the retired pay of the member or former member shall be increased on the effective date of the next adjustment of retired pay under subsection (b) only by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

(A) the price index for the base quarter of that year, exceeds

(B) the price index for the calendar quarter immediately before the calendar quarter in which the rates of monthly basic pay on which the retired pay is based became effective.

(2) FIRST ADJUSTMENT WITH NO INTERVENING INCREASE IN BASIC PAY.—If a person described in paragraph (3) becomes entitled to retired pay on or after the effective date of an adjustment in retired pay under subsection (b) but before the effective date of the next increase in the rates of monthly basic pay, the retired pay of the member or former member shall be increased, effective on the date the member becomes entitled to that pay, by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

(A) the base index, exceeds

(B) the price index for the calendar quarter immediately before the calendar quarter in which the rates of monthly basic pay on which the retired pay is based became effective.

(3) MEMBERS COVERED.—Paragraphs (1) and (2) apply to a member or former member of an armed force who first became a member of a uniformed service before August 1, 1986, and whose retired pay base is determined under section 1406 of this title.

(d) FIRST COLA ADJUSTMENT FOR MEMBERS WITH RETIRED PAY COMPUTED USING HIGH-THREE.—Notwithstanding subsection (b), the retired pay of a member or former member of an armed force who first became a member of a uniformed service before August 1, 1986, and whose retired pay base is determined under section 1407 of this title shall be increased on the effective date of the first adjustment of retired pay under subsection (b) after the member or former member becomes entitled to retired pay by the percent (adjusted to the nearest one-tenth of 1 percent) equal to the difference between the percent by which—

(1) the price index for the base quarter of that year, exceeds

(2) the price index for the calendar quarter immediately before the calendar quarter during which the member became entitled to retired pay.

(e) PRO RATING OF INITIAL ADJUSTMENT.—Notwithstanding subsection (b), the retired pay of a member or former member of an armed force who first became a member of a uniformed service on or after August 1, 1986, shall be increased on the effective date of the first adjustment of retired pay under subsection (b) after the

member or former member becomes entitled to retired pay by the percent (adjusted to the nearest one-tenth of 1 percent) equal to the difference between—

(1) the percent by which—

(A) the price index for the base quarter of that year, exceeds

(B) the price index for the calendar quarter immediately before the calendar quarter during which the member became entitled to retired pay; and

(2) one-fourth of 1 percent for each calendar quarter from the quarter described in paragraph (1)(B) to the quarter described in paragraph (1)(A).

If in any case the percent described in paragraph (2) exceeds the percent determined under paragraph (1), such an increase shall not be made.

(f) PREVENTION OF PAY INVERSIONS.—Notwithstanding any other provision of law, the monthly retired pay of a member or a former member of an armed force who initially became entitled to that pay on or after January 1, 1971, may not be less than the monthly retired pay to which he would be entitled if he had become entitled to retired pay at an earlier date based on the grade in which the member is retired, adjusted to reflect any applicable increases in such pay under this section. In computing the amount of retired pay to which such a member or former member would have been entitled on that earlier date, the computation shall be based on his grade, length of service, and the rate of basic pay applicable to him at that time, except that such computation may not be based on a rate of basic pay for a grade higher than the grade in which the member is retired. This subsection does not authorize any increase in the monthly retired pay to which a member was entitled for any period before October 7, 1975.

(g) DEFINITIONS.—In this section:

(1) The term "price index" means the Consumer Price Index (all items, United States city average) published by the Bureau of Labor Statistics.

(2) The term "base quarter" means the calendar quarter ending on September 30 of each year.

(3) The term "base index" means the price index for the base quarter for the most recent adjustment under subsection (b).

(4) The term "retired pay" includes retainer pay.

(h) PRICE INDEX FOR A QUARTER.—For purposes of this section, the price index for a calendar quarter is the arithmetical mean of the price index for the three months comprising that quarter.

(Added P.L. 88–132, § 5(g)(1), Oct. 2, 1963, 77 Stat. 213; amended P.L. 89–132, § 5(b), Aug. 21, 1965, 79 Stat. 547; P.L. 90–207, § 2(a)(1), Dec. 16, 1967, 81 Stat. 652; P.L. 91–179, § 1, Dec. 30, 1969, 83 Stat. 837; P.L. 94–106, § 806, Oct. 7, 1975, 89 Stat. 538; P.L. 94–361, § 801(a), July 14, 1976, 90 Stat. 929; P.L. 94–440, § 1306(d)(1), Oct. 1, 1976, 90 Stat. 1462; P.L. 96–342, § 812(b)(1), Sept. 8, 1980, 94 Stat. 1098; P.L. 98–94, §§ 921(a)(1), 921(b), 922(a)(2), Sept. 24, 1983, 97 Stat. 640, 641; P.L. 98–525, § 1405(26), Oct. 19, 1984, 98 Stat. 2623; P.L. 99–348, § 102, July 1, 1986, 100 Stat. 683; P.L. 100–224, § 1, Dec. 30, 1987, 101 Stat. 1536; P.L. 100–456, § 622(a), Sept. 29, 1988, 102 Stat. 1903; P.L. 101–189, § 651(b)(1), Nov. 29, 1989, 103 Stat. 1460; P.L. 103–66, § 2001, Aug. 10, 1993, 107 Stat. 335; P.L. 103–160, § 1182(e), Nov. 30, 1993, 107 Stat. 1773; P.L. 103–337, § 633(a), Oct. 5, 1994, 108 Stat. 2787; P.L. 104–106, § 631(a), Feb. 10, 1996, 110 Stat. 364; P.L. 104–201, § 631(a), 632, Sept. 23, 1996, 110 Stat. 2549; P.L. 106–65, §§ 601(e), 641(b), 643(b)(1), 1066(a)(10), Oct. 5, 1999, 113 Stat. 648, 662, 663, 771.)

§ 1402. Recomputation of retired or retainer pay to reflect later active duty of members who first became members before September 8, 1980

(a) A member of an armed force who first became a member of a uniformed service before September 8, 1980, and who has become entitled to retired pay or retainer pay, and who thereafter serves on active duty (other than for training), is entitled to recompute his retired pay or retainer pay upon his release from that duty according to the following table.

Column 1 Take	Column 2 Multiply by	Column 3 Subtract
Monthly basic pay[1] of the grade in which he would be eligible— (1) to retire if he were retiring upon that release from active duty; or (2) to transfer to the Fleet Reserve or Fleet Marine Corps Reserve if he were transferring to either upon that release from active duty.	2½ percent of the sum of— (1) the years of service that may be credited to him in computing retired pay or retainer pay; and (2) his years of active service after becoming entitled to retired pay or retainer pay.[2]	Excess over 75 percent of pay upon which computation is based.

[1] For a member who has been entitled, for continuous period of at least two years, to basic pay under the rates of basic pay in effect upon that release from active duty, compute under those rates. For a member who has been entitled to basic pay for a continuous period of at least two years upon that release from active duty, but who is not covered by the preceding sentence, compute under the rates of basic pay replaced by those in effect upon that release from active duty. For any other member, compute under the rates of basic pay under which the member's retired pay or retainer pay was computed when he entered on that active duty.

[2] Before applying the percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

However, an officer who was ordered to active duty (other than for training) in the grade that he holds on the retired list under former section 6150 of this title, or under any other law that authorized advancement on the retired list based upon a special commendation for the performance of duty in actual combat, may have his retired pay recomputed under this subsection on the basis of the rate of basic pay applicable to that grade upon his release from that active duty only if he has been entitled, for a continuous period of at least three years, to basic pay at that rate. If, upon his release from that active duty, he has been entitled to the basic pay of that grade for a continuous period of at least three years, but he does not qualify under the preceding sentence, he may have his retired pay recomputed under this subsection on the basis of the rate of basic pay prescribed for that grade by the rates of basic pay replaced by those in effect upon his release from that duty.

(b) A member of an armed force who first became a member of a uniformed service before September 8, 1980, and who has been retired other than for physical disability, and who while on active duty incurs a physical disability of at least 30 percent for which he would otherwise be eligible for retired pay under chapter 61 of this title, is entitled, upon his release from active duty, to retired pay under subsection (d).

(c) A member of an armed force who first became a member of a uniformed service before September 8, 1980, and who—

(1) was retired for physical disability under section 1201 or 1204 of this title or any other law or whose name is on the temporary disability retired list;

(2) incurs, while on active duty after retirement or after his name was placed on that list, a physical disability that is in addition to or that aggravates the physical disability for which he was retired or for which his name was placed on the temporary disability retired list; and

(3) is qualified under section 1201, 1202, 1204, or 1205 of this title;

is entitled, upon his release from active duty, to retired pay under subsection (d).

(d) A member of an armed force covered by subsection (b) or (c) may elect to receive either (1) the retired pay to which he became entitled when he retired, increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay, or (2) retired pay computed according to the following table.

Column 1 Take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
Highest monthly basic pay that member received while on active duty after retirement or after date when his name was placed on temporary disability retired list, as the case may be.	As member elects— (1) 2½% of years of service credited under section 1208 of this title;[1] or (2) the highest percentage of disability attained while on active duty after retirement or after the date when his name was placed on temporary disability retired list, as the case may be.[1]	Add amount necessary to increase product of columns 1 and 2 to 50% of pay upon which computation is based, if member is on temporary disability retired list.	Excess over 75% of pay upon which computation is based.

[1] Before applying the percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

If, while on active duty after retirement or after his name was placed on the temporary disability retired list, a member covered by this subsection was promoted to a higher grade in which he served satisfactorily, as determined by the Secretary concerned, he is entitled to retired pay based on the monthly basic pay to which he would be entitled if he were on active duty in that higher grade.

(e) Notwithstanding subsection (a), a member covered by that subsection may elect, upon his release from active duty, to have his retired pay or retainer pay—

(1) computed according to the formula set forth in subsection (a) but using the rate of basic pay under which his retired pay or retainer pay was computed when he entered on active duty; and

(2) increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay.

(f)(1) In the case of a member who is entitled to recompute retired pay under this section upon release from active duty served after retiring under section 3914 or 8914 of this title, the member's retired pay as recomputed under another provision of this section shall be increased by 10 percent of the amount so recomputed if the member has been credited by the Secretary concerned with extraordinary heroism in the line of duty during any period of active duty service in the armed forces.

(2) The amount of the retired pay as recomputed under another provision of this section and as increased under paragraph (1) may not exceed the amount equal to 75 percent of the monthly rate of basic pay upon which the recomputation of such retired pay is based.

(3) The determination of the Secretary concerned as to extraordinary heroism is conclusive for all purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 107; June 30, 1960, P.L. 86–559, § 1(5), 74 Stat. 265; Oct. 2, 1963, P.L. 88–132, § 5(*l*)(1), 77 Stat. 214; Dec. 16, 1967, P.L. 90–207, § 2(a)(2), 81 Stat. 653; Sept. 8, 1980, P.L. 96–342, § 813(b)(2), 94 Stat. 1102; Dec. 12, 1980, P.L. 96–513, § 511(50), 94 Stat. 2924; Sept. 24, 1983, P.L. 98–94, §§ 922, 923, 97 Stat. 641, 642; July 1, 1986, P.L. 99–348, §§ 201(b)(3), 304(a)(3), (b)(3), 100 Stat. 694, 703; Oct. 23, 1992, P.L. 102–484, § 642(a), 106 Stat. 2424.)

§ 1402a. Recomputation of retired or retainer pay to reflect later active duty of members who first became members after September 7, 1980

(a) IN GENERAL.—A member of an armed force—

(1) who first became a member of a uniformed service after September 7, 1980;

(2) who has become entitled to retired pay or retainer pay; and

(3) who thereafter serves on active duty (other than for training),

is entitled to recompute his retired pay or retainer pay upon release from that duty according to the following table.

Column 1 Take	Column 2 Multiply by
Retired pay base or retainer pay base under section 1407 which he would be entitled to use if— (1) he were retiring upon release from that active duty; or (2) he were transferring to the Fleet Reserve or Fleet Marine Corps Reserve upon that release from active duty.	The retired pay multiplier or retainer pay multiplier prescribed in section 1409 for the sum of— (1) the years of service that may be credited to him in computing retired pay or retainer pay; and (2) his years of active service after becoming entitled to retired pay or retainer pay.

(b) NEW DISABILITY INCURRED DURING LATER ACTIVE DUTY.—A member of an armed force who first became a member of a uniformed service after September 7, 1980, who has been retired other than for physical disability and who while on active duty incurs a physical disability of at least 30 percent for which he would otherwise be eligible for retired pay under chapter 61 of this title, is entitled, upon his release from active duty, to retired pay under subsection (d).

(c) ADDITIONAL OR AGGRAVATED DISABILITY INCURRED DURING LATER ACTIVE DUTY.—A member of an armed force who first became a member of a uniformed service after September 7, 1980, and who—

(1) was retired for physical disability under section 1201 or 1204 of this title or any other law or whose name is on the temporary disability retired list;

(2) incurs, while on active duty after retirement or after his name was placed on the temporary disability retired list, a physical disability that is in addition to or that aggravates the physical disability for which he was retired or for which his name was placed on that list; and

(3) is qualified under section 1201, 1202, 1204, or 1205 of this title;

is entitled, upon his release from active duty, to retired pay under subsection (d).

(d) COMPUTATION FOR LATER DISABILITY.—A member of an armed force covered by subsection (b) or (c) may elect to receive either (1) the retired pay to which he became entitled when he retired, increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay, or (2) retired pay computed according to the following table.

Column 1 Take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
The retired pay base computed under section 1407(b) of this title.	As member elects— (1) 2½ percent of years of service credited under section 1208 of this title;[1] or (2) the highest percentage of disability attained while on active duty after retirement or after the date when his name was placed on temporary disability retired list, as the case may be.	Amount necessary to increase product of columns 1 and 2 to 50 percent of pay upon which computation is based, if member is on temporary disability retired list.	Excess over 75 percent of retired or retainer pay base upon which computation is based.

[1] Before applying the percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

(e) ALTERNATIVE RECOMPUTATION TO SUBSECTION (a) FORMULA.—Notwithstanding subsection (a), a member covered by that subsection may elect, upon his release from that active duty, to have his retired pay or retainer pay—

(1) computed according to the formula set forth in subsection (a) but using the monthly retired pay base under which his retired pay or retainer pay was computed when he entered on that active duty; and

(2) increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay.

(f) ADDITIONAL 10 PERCENT FOR CERTAIN ENLISTED MEMBERS CREDITED WITH EXTRAORDINARY HEROISM.—(1) In the case of a member who is entitled to recompute retired pay under this section upon release from active duty served after retiring under section 3914 or 8914 of this title, the member's retired pay as recomputed under another provision of this section shall be increased by 10 percent of the amount so recomputed if the member has been credited by the Secretary concerned with extraordinary heroism in the line of duty during any period of active duty service in the armed forces.

(2) The amount of the retired pay as recomputed under another provision of this section and as increased under paragraph (1) may not exceed the amount equal to 75 percent of the retired pay base upon which the recomputation of such retired pay is based.

(3) The determination of the Secretary concerned as to extraordinary heroism is conclusive for all purposes.

(Added P.L. 96–342, § 813(b)(3)(A), Sept. 8, 1980, 94 Stat. 1102; amended P.L. 96–513, § 511(51)(A), (B), Dec. 12, 1980, 94 Stat. 2924; P.L. 98–94, §§ 922, 923, Sept. 24, 1983, 97 Stat. 641, 642; P.L. 99–348, § 201(b), July 1, 1986, 100 Stat. 693; P.L. 102–484, § 651(b), Oct. 23, 1992, 106 Stat. 2425.)

§ 1403. Disability retired pay: treatment under Internal Revenue Code of 1986

That part of the retired pay of a member of an armed force, computed under formula No. 1 or 2 of section 1401, or under section 1402(d) or 1402a(d) of this title on the basis of years of service, which exceeds the retired pay that he would receive if it were computed on the basis of percentage of disability is not considered as a pension, annuity, or similar allowance for personal injury, or sickness, resulting from active service in the armed forces, under section 104(a) of the Internal Revenue Code of 1986.

(Aug. 10, 1956, ch. 1041, 70A Stat. 108; Sept. 8, 1980, P.L. 96–342, § 813(b)(3)(C), 94 Stat. 1104; Dec. 12, 1980, P.L. 96–513, § 511(52)(A), (B), 94 Stat. 2925; April 21, 1987, P.L. 100–26, § 7(h), 101 Stat. 282.)

§ 1404. Applicability of section 8301 of title 5

The retirement provisions of this title are subject to section 8301 of title 5.

(Aug. 10, 1956, ch. 1041, 70A Stat. 108; Nov. 2, 1966, P.L. 89–718, § 3, 80 Stat. 1115.)

§ 1405. Years of service

(a) IN GENERAL.—For the purposes of the computation of the years of service of a member of the armed forces under a provision

of this title providing for such computation to be made under this section, the years of service of the member are computed by adding—

(1) his years of active service;

(2) the years of service, not included in clause (1), with which he was entitled to be credited on May 31, 1958, in computing his basic pay; and

(3) the years of service, not included in clause (1) or (2), with which he would be entitled to be credited under section 12733 of this title if he were entitled to retired pay under section 12731 of this title.

(b) FRACTIONAL YEARS OF SERVICE.—In determining a member's years of service under subsection (a)—

(1) each full month of service that is in addition to the number of full years of service creditable to the member shall be credited as 1/12 of a year; and

(2) any remaining fractional part of a month shall be disregarded.

(c) EXCLUSION OF TIME REQUIRED TO BE MADE UP OR EXCLUDED.—(1) Time required to be made up by an enlisted member of the Army or Air Force under section 972(a) of this title, or required to be made up by an enlisted member of the Navy, Marine Corps, or Coast Guard under that section with respect to a period of time after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1995, may not be counted in determining years of service under subsection (a).

(2) Section 972(b) of this title excludes from computation of an officer's years of service for purposes of this section any time identified with respect to that officer under that section.

(Added P.L. 85–422, § 11(a)(1)(A), May 20, 1958, 72 Stat. 130; amended P.L. 85–861, § 1(31A), Sept. 2, 1958, 72 Stat. 1451; P.L. 87–649, § 6(f)(4), Sept. 7, 1962, 76 Stat. 494; P.L. 87–651, § 109, Sept. 7, 1962, 76 Stat. 509; P.L. 90–130, § 1(7), Nov. 8, 1967, 81 Stat. 374; P.L. 96–513, § 113(b), Dec. 12, 1980, 94 Stat. 2877; P.L. 97–295, § 1(17), Oct. 12, 1982, 96 Stat. 1290; P.L. 99–348, § 106, July 1, 1986, 100 Stat. 691; P.L. 103–337, §§ 635(d), 1662(j)(3), Oct. 5, 1994, 108 Stat. 2789, 3004; P.L. 104–106, § 561(d)(1), Feb. 10, 1996, 110 Stat. 322.)

§ 1406. Retired pay base for members who first became members before September 8, 1980: final basic pay

(a) USE OF RETIRED PAY BASE IN COMPUTING RETIRED PAY.—

(1) GENERAL RULE.—The retired pay or retainer pay of any person entitled to that pay who first became a member of a uniformed service before September 8, 1980, is computed using the retired pay base or retainer pay base determined under this section.

(2) EXCEPTION FOR RECOMPUTATION.—Recomputation of retired or retainer pay to reflect later active duty is provided for under section 1402 of this title without reference to a retired pay base or retainer pay base.

(b) RETIREMENT UNDER SUBTITLE A OR E.—

(1) DISABILITY, WARRANT OFFICER, AND DOPMA RETIREMENT.—In the case of a person whose retired pay is computed under this subtitle, the retired pay base is determined in accordance with the following table.

For a member entitled to retired pay under section:	The retired pay base is:
1201 1202 1204 1205	Monthly basic pay[1] of grade to which member is entitled under section 1372 or to which he was entitled on day before retirement or placement on temporary disability retired list, whichever is higher.
633 634 635 636 1251	Monthly basic pay[2] of member's retired grade.[3]

[1] Compute at rates applicable on date of retirement or date when member's name was placed on temporary disability retired list, as the case may be.
[2] Compute at rates applicable on date of retirement.
[3] For the purposes of this subsection, determine member's retired grade as if sections 3962 and 8962 did not apply.

(2) NON-REGULAR SERVICE RETIREMENT.—In the case of a person who is entitled to retired pay under section 12731 of this title, the retired pay base is the monthly basic pay, determined at the rates applicable on the date when retired pay is granted, of the highest grade held satisfactorily by the person at any time in the armed forces. For purposes of the preceding sentence, the highest grade in which a person served satisfactorily as an officer shall be determined in accordance with section 1370(d) of this title.

(c) VOLUNTARY RETIREMENT FOR MEMBERS OF THE ARMY.—

(1) IN GENERAL.—In the case of a member whose retired pay is computed under section 3991 of this title or who is entitled to retired pay computed under section 3992 of this title, the retired pay base is determined in accordance with the following table.

For a member entitled to retired pay under section:	The retired pay base is:
3911 3918 3920 3924	Monthly basic pay of member's retired grade.[1]
3914 3917	Monthly basic pay to which member was entitled on day before he retired.
3992	Monthly basic pay of grade to which member is advanced on retired list.

[1] For the purposes of this subsection, determine member's retired grade as if section 3962 did not apply.

(2) RATE OF BASIC PAY TO BE USED.—The rate of basic pay to be used under paragraph (1) is the rate applicable on the date of the member's retirement.

(d) RETIREMENT FOR MEMBERS OF THE NAVY AND MARINE CORPS.—In the case of a member whose retired pay is computed under section 6333 of this title, who is advanced on the retired list under section 6151 or 6334 of this title, or who is entitled to retainer pay under section 6330 of this title, the retired pay base or retainer pay base is determined in accordance with the following table.

For a member entitled to retired or retainer pay under section:	The retired pay base or retainer pay base is:
6323 6325(a) 6383	Basic pay of the grade in which the member retired.[1]
6325(b)	Basic pay of the grade the officer would hold if he had not received an appointment described in section 6325(b).
6326	Basic pay of the pay grade in which the member was serving on the day before retirement.
6330	Basic pay that the member received at the time of transfer to the Fleet Reserve or Fleet Marine Corps Reserve.
6151	Basic pay of the grade to which the member is advanced under section 6151.
6334	Basic pay of the grade to which the member is advanced under section 6334.

[1] If the rate specified is less than the pay of any warrant officer grade satisfactorily held by the member on active duty, use the monthly basic pay of that warrant officer grade.

(e) VOLUNTARY RETIREMENT FOR MEMBERS OF THE AIR FORCE.—

(1) IN GENERAL.—In the case of a member whose retired pay is computed under section 8991 of this title or who is entitled to retired pay computed under section 8992 of this title, the retired pay base is determined in accordance with the following table.

For a member entitled to retired pay under section:	The retired pay base is:
8911 8918 8920 8924	Monthly basic pay of member's retired grade.[1]
8914 8917	Monthly basic pay to which member was entitled on day before he retired.
8992	Monthly basic pay of grade to which member is advanced on retired list.

[1] For the purposes of this subsection, determine member's retired grade as if section 8962 did not apply.

(2) RATE OF BASIC PAY TO BE USED.—The rate of basic pay to be used under paragraph (1) is the rate applicable on the date of the member's retirement.

(f) COAST GUARD.—In the case of a member who is retired under any section of title 14, the member's retired pay is computed under section 423(a) of title 14 in the manner provided in that section.

(g) COMMISSIONED CORPS OF NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.—In the case of an officer whose retired pay is computed under section 16 of the Coast and Geodetic Survey Commissioned Officers' Act of 1948 (33 U.S.C. 853o), the retired pay base is the basic pay of the rank with which the officer retired.

(h) COMMISSIONED CORPS OF PUBLIC HEALTH SERVICE.—In the case of an officer who is retired under section 210(g) or 211(a) of the Public Health Service Act (42 U.S.C. 211(g), 212(a)), the retired pay base is determined as follows:

(1) MANDATORY RETIREMENT.—If the officer is retired under section 210(g) of such Act, the retired pay base is the basic pay of the permanent grade held by the officer at the time of retirement.

(2) VOLUNTARY RETIREMENT.—If the officer is retired under section 211(a) of such Act, the retired pay base is the basic pay of the highest grade held by the officer and in which, in the case of a temporary promotion to such grade, the officer has performed active duty for not less than six months.

(i) SPECIAL RULE FOR FORMER CHAIRMEN AND VICE CHAIRMEN OF THE JCS, CHIEFS OF SERVICE, AND SENIOR ENLISTED MEMBERS.—

(1) IN GENERAL.—For the purposes of subsections (b) through (e), in determining the rate of basic pay to apply in the determination of the retired pay base of a member who has served as Chairman or Vice Chairman of the Joint Chiefs of Staff, as a Chief of Service, or as the senior enlisted member of an armed force, the highest rate of basic pay applicable to the member while serving in that position shall be used, if that rate is higher than the rate otherwise authorized by this section.

(2) EXCEPTION FOR MEMBERS REDUCED IN GRADE OR WHO DO NOT SERVE SATISFACTORILY.—Paragraph (1) does not apply in the case of a member who, while or after serving in a position specified in that paragraph and by reason of conduct occurring after October 16, 1998—

(A) in the case of an enlisted member, is reduced in grade as the result of a court-martial sentence, nonjudicial punishment, or other administrative process; or

(B) in the case an officer, is not certified by the Secretary of Defense under section 1370(c) of this title as having served on active duty satisfactorily in the grade of general or admiral, as the case may be, while serving in that position.

(3) DEFINITIONS.—In this subsection:

(A) The term "Chief of Service" means any of the following:

(i) Chief of Staff of the Army.
(ii) Chief of Naval Operations.
(iii) Chief of Staff of the Air Force.
(iv) Commandant of the Marine Corps.
(v) Commandant of the Coast Guard.

(B) The term "senior enlisted member" means any of the following:

(i) Sergeant Major of the Army.
(ii) Master Chief Petty Officer of the Navy.
(iii) Chief Master Sergeant of the Air Force.

(iv) Sergeant Major of the Marine Corps.

(v) Master Chief Petty Officer of the Coast Guard.

(Added P.L. 99–348, § 104(b), July 1, 1986, 100 Stat. 686 [former § 1406 transferred to § 1338]; amended P.L. 100–180, § 1314(b)(6), Dec. 4, 1987, 101 Stat. 1175; P.L. 100–456, § 1233(c), Sept. 29, 1988, 102 Stat. 2057; P.L. 102–190, § 1131(7), Dec. 5, 1991, 105 Stat. 1506; P.L. 103–337, § 1662(j)(4), Oct. 5, 1994, 108 Stat. 3004; P.L. 105–85, § 1073(a)(23), Nov. 18, 1997, 111 Stat. 1901; P.L. 105–261, § 646, Oct. 17, 1998, 112 Stat. 2050; P.L. 106–65, § 1066(a)(11), Oct. 5, 1999, 113 Stat. 771.)

§ 1407. Retired pay base for members who first became members after September 7, 1980: high-36 month average

(a) USE OF RETIRED PAY BASE IN COMPUTING RETIRED PAY.—The retired pay or retainer pay of any person entitled to that pay who first became a member of a uniformed service after September 7, 1980, is computed using the retired pay base or retainer pay base determined under this section.

(b) HIGH-THREE AVERAGE.—Except as provided in subsection (f), the retired pay base or retainer pay base of a person under this section is the person's high-three average determined under subsection (c) or (d).

(c) COMPUTATION OF HIGH-THREE AVERAGE FOR MEMBERS ENTITLED TO RETIRED OR RETAINER PAY FOR REGULAR SERVICE.—

(1) GENERAL RULE.—The high-three average of a member entitled to retired or retainer pay under any provision of law other than section 1204 or 1205 or section 12731 of this title is the amount equal to—

(A) the total amount of monthly basic pay to which the member was entitled for the 36 months (whether or not consecutive) out of all the months of active service of the member for which the monthly basic pay to which the member was entitled was the highest, divided by

(B) 36.

(2) SPECIAL RULE FOR SHORT-TERM DISABILITY RETIREES.—In the case of a member who is entitled to retired pay under section 1201 or 1202 of this title and who has completed less than 36 months of active service, the member's high-three average (notwithstanding paragraph (1)) is the amount equal to—

(A) the total amount of basic pay to which the member was entitled during the period of the member's active service, divided by

(B) the number of months (including any fraction thereof) of the member's active service.

(d) COMPUTATION OF HIGH-THREE AVERAGE FOR MEMBERS AND FORMER MEMBERS ENTITLED TO RETIRED PAY FOR NONREGULAR SERVICE.—

(1) RETIRED PAY UNDER CHAPTER 1223.—The high-three average of a member or former member entitled to retired pay under section 12731 of this title is the amount equal to—

(A) the total amount of monthly basic pay to which the member or former member was entitled during the member or former member's high-36 months (or to which the member or former member would have been entitled if the member or former member had served on active duty dur-

ing the entire period of the member or former member's high-36 months), divided by

(B) 36.

(2) NONREGULAR SERVICE DISABILITY RETIRED PAY.—The high-three average of a member entitled to retired pay under section 1204 or 1205 of this title is the amount equal to—

(A) the total amount of monthly basic pay to which the member was entitled during the member's high-36 months (or to which the member would have been entitled if the member had served on active duty during the entire period of the member's high-36 months), divided by

(B) 36.

(3) SPECIAL RULE FOR SHORT-TERM DISABILITY RETIREES.—In the case of a member who is entitled to retired pay under section 1204 or 1205 of this title and who was a member for less than 36 months before being retired under that section, the member's high-three average (notwithstanding paragraph (2)) is the amount equal to—

(A) the total amount of basic pay to which the member was entitled during the entire period the member was a member of a uniformed service before being so retired (or to which the member would have been entitled if the member had served on active duty during the entire period the member was a member of a uniformed service before being so retired), divided by

(B) the number of months (including any fraction thereof) which the member was a member before being so retired.

(4) HIGH-36 MONTHS.—The high-36 months of a member or former member whose retired pay is covered by paragraph (1) or (2) are the 36 months (whether or not consecutive) out of all the months before the member or former member became entitled to retired pay for which the monthly basic pay to which the member or former member was entitled (or would have been entitled if serving on active duty during those months) was the highest. In the case of a former member, only months during which the former member was a member of a uniformed service may be used for purposes of the preceding sentence.

(e) LIMITATION FOR ENLISTED MEMBERS RETIRING WITH LESS THAN 30 YEARS' SERVICE.—In the case of a member who is retired under section 3914 or 8914 of this title or who is transferred to the Fleet Reserve or Fleet Marine Corps Reserve under section 6330 of this title, the member's high-36 average shall be computed using only rates of basic pay applicable to months of active duty of the member as an enlisted member.

(f) EXCEPTION FOR ENLISTED MEMBERS REDUCED IN GRADE AND OFFICERS WHO DO NOT SERVE SATISFACTORILY IN HIGHEST GRADE HELD.—

(1) COMPUTATION BASED ON PRE-HIGH-THREE RULES.—In the case of a member or former member described in paragraph (2), the retired pay base or retainer pay base is determined under section 1406 of this title in the same manner as

if the member or former member first became a member of a uniformed service before September 8, 1980.

(2) AFFECTED MEMBERS.—A member or former member referred to in paragraph (1) is a member or former member who by reason of conduct occurring after the date of the enactment of this subsection—

(A) in the case of a member retired in an enlisted grade or transferred to the Fleet Reserve or Fleet Marine Corps Reserve, was at any time reduced in grade as the result of a court-martial sentence, nonjudicial punishment, or an administrative action, unless the member was subsequently promoted to a higher enlisted grade or appointed to a commissioned or warrant grade; and

(B) in the case of an officer, is retired in a grade lower than the highest grade in which served by reason of denial of a determination or certification under section 1370 of this title that the officer served on active duty satisfactorily in that grade.

(3) SPECIAL RULE FOR ENLISTED MEMBERS.—In the case of a member who retires within three years after having been reduced in grade as described in paragraph (2)(A), who retires in an enlisted grade that is lower than the grade from which reduced, and who would be subject to paragraph (1) but for a subsequent promotion to a higher enlisted grade or a subsequent appointment to a warrant or commissioned grade, the rates of basic pay used in the computation of the member's high-36 average for the period of the member's service in a grade higher than the grade in which retired shall be the rates of pay that would apply if the member had been serving for that period in the grade in which retired.

(Added P.L. 96–342, § 813(a)(1), Sept. 8, 1980, 94 Stat. 1100; revised in its entirety P.L. 99–348, § 104(b), July 1, 1986, 100 Stat. 689; amended P.L. 101–189, § 651(a), (b)(2), Nov. 29, 1989, 103 Stat. 1459, 1460; P.L. 104–106, § 1501(c)(15), Feb. 10, 1996, 110 Stat. 499; P.L. 106–398, § 1[651], Oct. 30, 2000, 114 Stat. 1654, 1654A–163.)

§ 1408. Payment of retired or retainer pay in compliance with court orders

(a) DEFINITIONS.—In this section:

(1) The term "court" means—

(A) any court of competent jurisdiction of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(B) any court of the United States (as defined in section 451 of title 28) having competent jurisdiction;

(C) any court of competent jurisdiction of a foreign country with which the United States has an agreement requiring the United States to honor any court order of such country; and

(D) any administrative or judicial tribunal of a State competent to enter orders for support or maintenance (including a State agency administering a program under a State plan approved under part D of title IV of the Social Security Act), and, for purposes of this subparagraph, the

term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) The term "court order" means a final decree of divorce, dissolution, annulment, or legal separation issued by a court, or a court ordered, ratified, or approved property settlement incident to such a decree (including a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation, or a court ordered, ratified, or approved property settlement incident to such previously issued decree), or a support order, as defined in section 453(p) of the Social Security Act (42 U.S.C. 653(p)), which—

(A) is issued in accordance with the laws of the jurisdiction of that court;

(B) provides for—

(i) payment of child support (as defined in section 459(i)(2) of the Social Security Act (42 U.S.C. 659(i)(2)));

(ii) payment of alimony (as defined in section 459(i)(3) of the Social Security Act (42 U.S.C. 659(i)(3))); or

(iii) division of property (including a division of community property); and

(C) in the case of a division of property, specifically provides for the payment of an amount, expressed in dollars or as a percentage of disposable retired pay, from the disposable retired pay of a member to the spouse or former spouse of that member.

(3) The term "final decree" means a decree from which no appeal may be taken or from which no appeal has been taken within the time allowed for taking such appeals under the laws applicable to such appeals, or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals.

(4) The term "disposable retired pay" means the total monthly retired pay to which a member is entitled less amounts which—

(A) are owed by that member to the United States for previous overpayments of retired pay and for recoupments required by law resulting from entitlement to retired pay;

(B) are deducted from the retired pay of such member as a result of forfeitures of retired pay ordered by a court-martial or as a result of a waiver of retired pay required by law in order to receive compensation under title 5 or title 38;

(C) in the case of a member entitled to retired pay under chapter 61 of this title, are equal to the amount of retired pay of the member under that chapter computed using the percentage of the member's disability on the date when the member was retired (or the date on which the member's name was placed on the temporary disability retired list); or

(D) are deducted because of an election under chapter 73 of this title to provide an annuity to a spouse or former

spouse to whom payment of a portion of such member's retired pay is being made pursuant to a court order under this section.

(5) The term "member" includes a former member entitled to retired pay under section 12731 of this title.

(6) The term "spouse or former spouse" means the husband or wife, or former husband or wife, respectively, of a member who, on or before the date of a court order, was married to that member.

(7) The term "retired pay" includes retainer pay.

(b) EFFECTIVE SERVICE OF PROCESS.—For the purposes of this section—

(1) service of a court order is effective if—

(A) an appropriate agent of the Secretary concerned designated for receipt of service of court orders under regulations prescribed pursuant to subsection (i) or, if no agent has been so designated, the Secretary concerned, is personally served or is served by facsimile or electronic transmission or by mail;

(B) the court order is regular on its face;

(C) the court order or other documents served with the court order identify the member concerned and include, if possible, the social security number of such member; and

(D) the court order or other documents served with the court order certify that the rights of the member under the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 501 et seq.) were observed; and

(2) a court order is regular on its face if the order—

(A) is issued by a court of competent jurisdiction;

(B) is legal in form; and

(C) includes nothing on its face that provides reasonable notice that it is issued without authority of law.

(c) AUTHORITY FOR COURT TO TREAT RETIRED PAY AS PROPERTY OF THE MEMBER AND SPOUSE.—(1) Subject to the limitations of this section, a court may treat disposable retired pay payable to a member for pay periods beginning after June 25, 1981, either as property solely of the member or as property of the member and his spouse in accordance with the law of the jurisdiction of such court. A court may not treat retired pay as property in any proceeding to divide or partition any amount of retired pay of a member as the property of the member and the member's spouse or former spouse if a final decree of divorce, dissolution, annulment, or legal separation (including a court ordered, ratified, or approved property settlement incident to such decree) affecting the member and the member's spouse or former spouse (A) was issued before June 25, 1981, and (B) did not treat (or reserve jurisdiction to treat) any amount of retired pay of the member as property of the member and the member's spouse or former spouse.

(2) Notwithstanding any other provision of law, this section does not create any right, title, or interest which can be sold, assigned, transferred, or otherwise disposed of (including by inheritance) by a spouse or former spouse. Payments by the Secretary concerned under subsection (d) to a spouse or former spouse with respect to a division of retired pay as the property of a member and

the member's spouse under this subsection may not be treated as amounts received as retired pay for service in the uniformed services.

(3) This section does not authorize any court to order a member to apply for retirement or retire at a particular time in order to effectuate any payment under this section.

(4) A court may not treat the disposable retired pay of a member in the manner described in paragraph (1) unless the court has jurisdiction over the member by reason of (A) his residence, other than because of military assignment, in the territorial jurisdiction of the court, (B) his domicile in the territorial jurisdiction of the court, or (C) his consent to the jurisdiction of the court.

(d) PAYMENTS BY SECRETARY CONCERNED TO (OR FOR BENEFIT OF) SPOUSE OR FORMER SPOUSE.—(1) After effective service on the Secretary concerned of a court order providing for the payment of child support or alimony or, with respect to a division of property, specifically providing for the payment of an amount of the disposable retired pay from a member to the spouse or a former spouse of the member, the Secretary shall make payments (subject to the limitations of this section) from the disposable retired pay of the member to the spouse or former spouse (or for the benefit of such spouse or former spouse to a State disbursement unit established pursuant to section 454B of the Social Security Act or other public payee designated by a State, in accordance with part D of title IV of the Social Security Act, as directed by court order, or as otherwise directed in accordance with such part D) in an amount sufficient to satisfy the amount of child support and alimony set forth in the court order and, with respect to a division of property, in the amount of disposable retired pay specifically provided for in the court order. In the case of a spouse or former spouse who, pursuant to section 408(a)(3) of the Social Security Act (42 U.S.C. 608(a)(4)), assigns to a State the rights of the spouse or former spouse to receive support, the Secretary concerned may make the child support payments referred to in the preceding sentence to that State in amounts consistent with that assignment of rights. In the case of a member entitled to receive retired pay on the date of the effective service of the court order, such payments shall begin not later than 90 days after the date of effective service. In the case of a member not entitled to receive retired pay on the date of the effective service of the court order, such payments shall begin not later than 90 days after the date on which the member first becomes entitled to receive retired pay.

(2) If the spouse or former spouse to whom payments are to be made under this section was not married to the member for a period of 10 years or more during which the member performed at least 10 years of service creditable in determining the member's eligibility for retired pay, payments may not be made under this section to the extent that they include an amount resulting from the treatment by the court under subsection (c) of disposable retired pay of the member as property of the member or property of the member and his spouse.

(3) Payments under this section shall not be made more frequently than once each month, and the Secretary concerned shall

not be required to vary normal pay and disbursement cycles for retired pay in order to comply with a court order.

(4) Payments from the disposable retired pay of a member pursuant to this section shall terminate in accordance with the terms of the applicable court order, but not later than the date of the death of the member or the date of the death of the spouse or former spouse to whom payments are being made, whichever occurs first.

(5) If a court order described in paragraph (1) provides for a division of property (including a division of community property) in addition to an amount of child support or alimony or the payment of an amount of disposable retired pay as the result of the court's treatment of such pay under subsection (c) as property of the member and his spouse, the Secretary concerned shall pay (subject to the limitations of this section) from the disposable retired pay of the member to the spouse or former spouse of the member, any part of the amount payable to the spouse or former spouse under the division of property upon effective service of a final court order of garnishment of such amount from such retired pay.

(6) In the case of a court order for which effective service is made on the Secretary concerned on or after the date of the enactment of this paragraph and which provides for payments from the disposable retired pay of a member to satisfy the amount of child support set forth in the order, the authority provided in paragraph (1) to make payments from the disposable retired pay of a member to satisfy the amount of child support set forth in a court order shall apply to payment of any amount of child support arrearages set forth in that order as well as to amounts of child support that currently become due.

(7)(A) The Secretary concerned may not accept service of a court order that is an out-of-State modification, or comply with the provisions of such a court order, unless the court issuing that order has jurisdiction in the manner specified in subsection (c)(4) over both the member and the spouse or former spouse involved.

(B) A court order shall be considered to be an out-of-State modification for purposes of this paragraph if the order—

(i) modifies a previous court order under this section upon which payments under this subsection are based; and

(ii) is issued by a court of a State other than the State of the court that issued the previous court order.

(e) LIMITATIONS.—(1) The total amount of the disposable retired pay of a member payable under all court orders pursuant to subsection (c) may not exceed 50 percent of such disposable retired pay.

(2) In the event of effective service of more than one court order which provide for payment to a spouse and one or more former spouses or to more than one former spouse, the disposable retired pay of the member shall be used to satisfy (subject to the limitations of paragraph (1)) such court orders on a first-come, first-served basis. Such court orders shall be satisfied (subject to the limitations of paragraph (1)) out of that amount of disposable retired pay which remains after the satisfaction of all court orders which have been previously served.

(3)(A) In the event of effective service of conflicting court orders under this section which assert to direct that different amounts be paid during a month to the same spouse or former spouse of the same member, the Secretary concerned shall—

(i) pay to that spouse from the member's disposable retired pay the least amount directed to be paid during that month by any such conflicting court order, but not more than the amount of disposable retired pay which remains available for payment of such court orders based on when such court orders were effectively served and the limitations of paragraph (1) and subparagraph (B) of paragraph (4);

(ii) retain an amount of disposable retired pay that is equal to the lesser of—

(I) the difference between the largest amount required by any conflicting court order to be paid to the spouse or former spouse and the amount payable to the spouse or former spouse under clause (i); and

(II) the amount of disposable retired pay which remains available for payment of any conflicting court order based on when such court order was effectively served and the limitations of paragraph (1) and subparagraph (B) of paragraph (4); and

(iii) pay to that member the amount which is equal to the amount of that member's disposable retired pay (less any amount paid during such month pursuant to legal process served under section 459 of the Social Security Act (42 U.S.C. 659) and any amount paid during such month pursuant to court orders effectively served under this section, other than such conflicting court orders) minus—

(I) the amount of disposable retired pay paid under clause (i); and

(II) the amount of disposable retired pay retained under clause (ii).

(B) The Secretary concerned shall hold the amount retained under clause (ii) of subparagraph (A) until such time as that Secretary is provided with a court order which has been certified by the member and the spouse or former spouse to be valid and applicable to the retained amount. Upon being provided with such an order, the Secretary shall pay the retained amount in accordance with the order.

(4)(A) In the event of effective service of a court order under this section and the service of legal process pursuant to section 459 of the Social Security Act (42 U.S.C. 659), both of which provide for payments during a month from the same member, satisfaction of such court orders and legal process from the retired pay of the member shall be on a first-come, first-served basis. Such court orders and legal process shall be satisfied out of moneys which are subject to such orders and legal process and which remain available in accordance with the limitations of paragraph (1) and subparagraph (B) of this paragraph during such month after the satisfaction of all court orders or legal process which have been previously served.

(B) Notwithstanding any other provision of law, the total amount of the disposable retired pay of a member payable by the

Secretary concerned under all court orders pursuant to this section and all legal processes pursuant to section 459 of the Social Security Act (42 U.S.C. 659) with respect to a member may not exceed 65 percent of the amount of the retired pay payable to such member that is considered under section 462 of the Social Security Act (42 U.S.C. 662) to be remuneration for employment that is payable by the United States.

(5) A court order which itself or because of previously served court orders provides for the payment of an amount which exceeds the amount of disposable retired pay available for payment because of the limit set forth in paragraph (1), or which, because of previously served court orders or legal process previously served under section 459 of the Social Security Act (42 U.S.C. 659), provides for payment of an amount that exceeds the maximum amount permitted under paragraph (1) or subparagraph (B) of paragraph (4), shall not be considered to be irregular on its face solely for that reason. However, such order shall be considered to be fully satisfied for purposes of this section by the payment to the spouse or former spouse of the maximum amount of disposable retired pay permitted under paragraph (1) and subparagraph (B) of paragraph (4).

(6) Nothing in this section shall be construed to relieve a member of liability for the payment of alimony, child support, or other payments required by a court order on the grounds that payments made out of disposable retired pay under this section have been made in the maximum amount permitted under paragraph (1) or subparagraph (B) of paragraph (4). Any such unsatisfied obligation of a member may be enforced by any means available under law other than the means provided under this section in any case in which the maximum amount permitted under paragraph (1) has been paid and under section 459 of the Social Security Act (42 U.S.C. 659) in any case in which the maximum amount permitted under subparagraph (B) of paragraph (4) has been paid.

(f) IMMUNITY OF OFFICERS AND EMPLOYEES OF UNITED STATES.—(1) The United States and any officer or employee of the United States shall not be liable with respect to any payment made from retired pay to any member, spouse, or former spouse pursuant to a court order that is regular on its face if such payment is made in accordance with this section and the regulations prescribed pursuant to subsection (i).

(2) An officer or employee of the United States who, under regulations prescribed pursuant to subsection (i), has the duty to respond to interrogatories shall not be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or because of, any disclosure of information made by him in carrying out any of his duties which directly or indirectly pertain to answering such interrogatories.

(g) NOTICE TO MEMBER OF SERVICE OF COURT ORDER ON SECRETARY CONCERNED.—A person receiving effective service of a court order under this section shall, as soon as possible, but not later than 30 days after the date on which effective service is made, send a written notice of such court order (together with a copy of such order) to the member affected by the court order at his last known address.

(h) BENEFITS FOR DEPENDENTS WHO ARE VICTIMS OF ABUSE BY MEMBERS LOSING RIGHT TO RETIRED PAY.—(1) If, in the case of a member or former member of the armed forces referred to in paragraph (2)(A), a court order provides (in the manner applicable to a division of property) for the payment of an amount from the disposable retired pay of that member or former member (as certified under paragraph (4)) to an eligible spouse or former spouse of that member or former member, the Secretary concerned, beginning upon effective service of such court order, shall pay that amount in accordance with this subsection to such spouse or former spouse.

(2) A spouse or former spouse of a member or former member of the armed forces is eligible to receive payment under this subsection if—

(A) the member or former member, while a member of the armed forces and after becoming eligible to be retired from the armed forces on the basis of years of service, has eligibility to receive retired pay terminated as a result of misconduct while a member involving abuse of a spouse or dependent child (as defined in regulations prescribed by the Secretary of Defense or, for the Coast Guard when it is not operating as a service in the Navy, by the Secretary of Transportation); and

(B) the spouse or former spouse—

(i) was the victim of the abuse and was married to the member or former member at the time of that abuse; or

(ii) is a natural or adopted parent of a dependent child of the member or former member who was the victim of the abuse.

(3) The amount certified by the Secretary concerned under paragraph (4) with respect to a member or former member of the armed forces referred to in paragraph (2)(A) shall be deemed to be the disposable retired pay of that member or former member for the purposes of this subsection.

(4) Upon the request of a court or an eligible spouse or former spouse of a member or former member of the armed forces referred to in paragraph (2)(A) in connection with a civil action for the issuance of a court order in the case of that member or former member, the Secretary concerned shall determine and certify the amount of the monthly retired pay that the member or former member would have been entitled to receive as of the date of the certification—

(A) if the member or former member's eligibility for retired pay had not been terminated as described in paragraph (2)(A); and

(B) if, in the case of a member or former member not in receipt of retired pay immediately before that termination of eligibility for retired pay, the member or former member had retired on the effective date of that termination of eligibility.

(5) A court order under this subsection may provide that whenever retired pay is increased under section 1401a of this title (or any other provision of law), the amount payable under the court order to the spouse or former spouse of a member or former member described in paragraph (2)(A) shall be increased at the same time by the percent by which the retired pay of the member or

former member would have been increased if the member or former member were receiving retired pay.

(6) Notwithstanding any other provision of law, a member or former member of the armed forces referred to in paragraph (2)(A) shall have no ownership interest in, or claim against, any amount payable under this section to a spouse or former spouse of the member or former member.

(7)(A) If a former spouse receiving payments under this subsection with respect to a member or former member referred to in paragraph (2)(A) marries again after such payments begin, the eligibility of the former spouse to receive further payments under this subsection shall terminate on the date of such marriage.

(B) A person's eligibility to receive payments under this subsection that is terminated under subparagraph (A) by reason of remarriage shall be resumed in the event of the termination of that marriage by the death of that person's spouse or by annulment or divorce. The resumption of payments shall begin as of the first day of the month in which that marriage is so terminated. The monthly amount of the payments shall be the amount that would have been paid if the continuity of the payments had not been interrupted by the marriage.

(8) Payments in accordance with this subsection shall be made out of funds in the Department of Defense Military Retirement Fund established by section 1461 of this title or, in the case of the Coast Guard, out of funds appropriated to the Department of Transportation for payment of retired pay for the Coast Guard.

(9)(A) A spouse or former spouse of a member or former member of the armed forces referred to in paragraph (2)(A), while receiving payments in accordance with this subsection, shall be entitled to receive medical and dental care, to use commissary and exchange stores, and to receive any other benefit that a spouse or a former spouse of a retired member of the armed forces is entitled to receive on the basis of being a spouse or former spouse, as the case may be, of a retired member of the armed forces in the same manner as if the member or former member referred to in paragraph (2)(A) was entitled to retired pay.

(B) A dependent child of a member or former member referred to in paragraph (2)(A) who was a member of the household of the member or former member at the time of the misconduct described in paragraph (2)(A) shall be entitled to receive medical and dental care, to use commissary and exchange stores, and to have other benefits provided to dependents of retired members of the armed forces in the same manner as if the member or former member referred to in paragraph (2)(A) was entitled to retired pay.

(C) If a spouse or former spouse or a dependent child eligible or entitled to receive a particular benefit under this paragraph is eligible or entitled to receive that benefit under another provision of law, the eligibility or entitlement of that spouse or former spouse or dependent child to such benefit shall be determined under such other provision of law instead of this paragraph.

(10)(A) For purposes of this subsection, in the case of a member of the armed forces who has been sentenced by a court-martial to receive a punishment that will terminate the eligibility of that member to receive retired pay if executed, the eligibility of that

member to receive retired pay may, as determined by the Secretary concerned, be considered terminated effective upon the approval of that sentence by the person acting under section 860(c) of this title (article 60(c) of the Uniform Code of Military Justice).

(B) If each form of the punishment that would result in the termination of eligibility to receive retired pay is later remitted, set aside, or mitigated to a punishment that does not result in the termination of that eligibility, a payment of benefits to the eligible recipient under this subsection that is based on the punishment so vacated, set aside, or mitigated shall cease. The cessation of payments shall be effective as of the first day of the first month following the month in which the Secretary concerned notifies the recipient of such benefits in writing that payment of the benefits will cease. The recipient may not be required to repay the benefits received before that effective date (except to the extent necessary to recoup any amount that was erroneous when paid).

(11) In this subsection, the term "dependent child", with respect to a member or former member of the armed forces referred to in paragraph (2)(A), means an unmarried legitimate child, including an adopted child or a stepchild of the member or former member, who—

(A) is under 18 years of age;

(B) is incapable of self-support because of a mental or physical incapacity that existed before becoming 18 years of age and is dependent on the member or former member for over one-half of the child's support; or

(C) if enrolled in a full-time course of study in an institution of higher education recognized by the Secretary of Defense for the purposes of this subparagraph, is under 23 years of age and is dependent on the member or former member for over one-half of the child's support.

(i) CERTIFICATION DATE.—It is not necessary that the date of a certification of the authenticity or completeness of a copy of a court order for child support received by the Secretary concerned for the purposes of this section be recent in relation to the date of receipt by the Secretary.

(j) REGULATIONS.—The Secretaries concerned shall prescribe uniform regulations for the administration of this section.

(k) RELATIONSHIP TO OTHER LAWS.—In any case involving an order providing for payment of child support (as defined in section 459(i)(2) of the Social Security Act) by a member who has never been married to the other parent of the child, the provisions of this section shall not apply, and the case shall be subject to the provisions of section 459 of such Act.

(Added P.L. 97–252, § 1002(a), Sept. 8, 1982, 96 Stat. 730; amended P.L. 98–525, § 643(a)–(d), Oct. 19, 1984, 98 Stat. 2547; P.L. 99–661, § 644(a), Nov. 14, 1986, 100 Stat. 3887; P.L. 100–26, § 7(h)(1), April 21, 1987, 101 Stat 282; P.L. 101–189, §§ 653(a)(5), 1622(e)(6), Nov. 29, 1989, 103 Stat. 1462, 1605; P.L. 101–510, § 555, Nov. 5, 1990, 104 Stat. 1569; P.L. 102–190, § 1061(a)(7), Dec. 5, 1991, 105 Stat. 1472; P.L. 102–484, § 653(a), Oct. 23, 1992, 106 Stat. 2426; P.L. 103–160, §§ 555(a), (b), 1182(a)(2), Nov. 30, 1993, 107 Stat. 1666, 1771; P.L. 104–106, § 1501(c)(16), Feb. 10, 1996, 110 Stat. 499; P.L. 104–193, §§ 362(c), 363(c), Aug. 22, 1996, 110 Stat. 2246, 2249; P.L. 104–201, § 636, Sept. 23, 1996, 110 Stat. 2579; P.L. 105–85, § 1073(a)(24), (25), Nov. 18, 1997, 111 Stat. 1901.)

§ 1409. Retired pay multiplier

(a) RETIRED PAY MULTIPLIER FOR REGULAR-SERVICE NONDISABILITY RETIREMENT.—In computing—

(1) the retired pay of a member of a uniformed service who is entitled to that pay under any provision of law other than—

(A) chapter 61 of this title (relating to retirement or separation for physical disability); or

(B) chapter 1223 of this title (relating to retirement for non-regular service); or

(2) the retainer pay of a member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under section 6330 of this title,

the retired pay multiplier (or retainer pay multiplier) is the percentage determined under subsection (b).

(b) PERCENTAGE.—

(1) GENERAL RULE.—Subject to paragraphs (2) and (3), the percentage to be used under subsection (a) is the product (stated as a percentage) of—

(A) 2½, and

(B) the member's years of creditable service (as defined in subsection (c)).

(2) REDUCTION APPLICABLE TO CERTAIN NEW-RETIREMENT MEMBERS WITH LESS THAN 30 YEARS OF SERVICE.—In the case of a member who first became a member of a uniformed service after July 31, 1986, has elected to receive a bonus under section 322 of title 37, has less than 30 years of creditable service, and is under the age of 62 at the time of retirement, the percentage determined under paragraph (1) shall be reduced by—

(A) 1 percentage point for each full year that the member's years of creditable service are less than 30; and

(B) 1/12 of 1 percentage point for each month by which the member's years of creditable service (after counting all full years of such service) are less than a full year.

(3) 75 PERCENT LIMIT.—In the case of a member with more than 30 years of creditable service, the percentage to be used under subsection (a) is 75 percent.

(c) YEARS OF CREDITABLE SERVICE DEFINED.—In this section, the term years of creditable service" means the number of years of service creditable to a member in computing the member's retired or retainer pay (including 1/12 of a year for each full month of service that is in addition to the number of full years of service of the member).

(Added P.L. 99–348, § 101, July 1, 1986, 100 Stat. 683; amended P.L. 101–189, § 651(b)(3), Nov. 29, 1989, 103 Stat. 1460; P.L. 103–337, § 1662(j)(6), Oct. 5, 1994, 108 Stat. 3005; P.L. 106–65, §§ 641(a), 643(b)(2), Oct. 5, 1999, 113 Stat. 662, 664.)

§ 1410. Restoral of full retirement amount at age 62 for certain members entering on or after August 1, 1986

In the case of a member or former member who first became a member of a uniformed service on or after August 1, 1986, who has elected to receive a bonus under section 322 of title 37, and who becomes entitled to retired pay before the age of 62, the retired pay of such member or former member shall be recomputed, effective on the first day of the first month beginning after the

member or former member attains 62 years of age, so as to be the amount equal to the amount of retired pay to which the member or former member would be entitled on that date if—

(1) increases in the retired pay of the member or former member under section 1401a(b) of this title had been computed as provided in paragraph (2) of that section (rather than under paragraph (3) of that section); and

(2) in the case of a member whose retired pay was subject to section 1409(b)(2) of this title, no reduction in the member's retired pay had been made under that section.

(Added P.L. 99–348, § 103, July 1, 1986, 100 Stat. 685; amended P.L. 100–224, § 2, Dec. 30, 1987, 101 Stat. 1536; P.L. 101–189, § 651(b)(4), Nov. 29, 1989, 103 Stat. 1460; P.L. 106–65, §§ 641(c), 643(b)(3)(A), Oct. 5, 1999, 113 Stat. 662, 664.)

§ 1411. Rules of construction

(a) CONSTRUCTION OF "FIRST BECAME A MEMBER".—For purposes of this chapter and other provisions of law providing for computation of retired or retainer pay of members of the uniformed services, a person shall be considered to first become a member of a uniformed service on the date the person is first enlisted, inducted, or appointed in a uniformed service.

(b) REFERENCES IN TABLES.—Section references in tables in this chapter are to sections of this title.

(Added P.L. 99–348, § 105, July 1, 1986, 100 Stat. 691.)

§ 1412. Rounding to next lower dollar

Amounts computed under this chapter, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(Added P.L. 99–348, § 105, July 1, 1986, 100 Stat. 691.)

§ 1413. Special compensation for certain severely disabled uniformed services retirees

(a) AUTHORITY.—The Secretary concerned shall pay to each eligible disabled uniformed services retiree a monthly amount determined under subsection (b).

(b) AMOUNT.—The amount to be paid to an eligible disabled uniformed services retiree in accordance with subsection (a) is the following:

(1) For any month for which the retiree has a qualifying service-connected disability rated as total, $300.

(2) For any month for which the retiree has a qualifying service-connected disability rated as 90 percent, $200.

(3) For any month for which the retiree has a qualifying service-connected disability rated as 80 percent or 70 percent, $100.

(c) ELIGIBLE MEMBERS.—An eligible disabled uniformed services retiree referred to in subsection (a) is a member of the uniformed services in a retired status (other than a member who is retired under chapter 61 of this title)[1] who—

[1] Section 657 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654A–166) provides:

(a) ELIGIBILITY FOR CHAPTER 61 RETIREES.—Section 1413(c) of title 10, United States Code, is amended by striking "(other than a member who is retired under chapter 61 of this title)".

Continued

(1) completed at least 20 years of service in the uniformed services that are creditable for purposes of computing the amount of retired pay to which the member is entitled; and

(2) has a qualifying service-connected disability.

(d) QUALIFYING SERVICE-CONNECTED DISABILITY DEFINED.—In this section, the term "qualifying service-connected disability" means a service-connected disability that—

(1) was incurred or aggravated in the performance of duty as a member of a uniformed service, as determined by the Secretary concerned; and

(2) is rated as not less than 70 percent disabling—

(A) by the Secretary concerned as of the date on which the member is retired from the uniformed services; or

(B) by the Secretary of Veterans Affairs within four years following the date on which the member is retired from the uniformed services.

(e) STATUS OF PAYMENTS.—Payments under this section are not retired pay.

(f) SOURCE OF FUNDS.—Payments under this section for any fiscal year shall be paid out of funds appropriated for pay and allowances payable by the Secretary concerned for that fiscal year.

(g) OTHER DEFINITIONS.—In this section:

(1) The term "service-connected" has the meaning given that term in section 101 of title 38.

(2) The term "disability rated as total" means—

(A) a disability that is rated as total under the standard schedule of rating disabilities in use by the Department of Veterans Affairs; or

(B) a disability for which the scheduled rating is less than total but for which a rating of total is assigned by reason of inability of the disabled person concerned to secure or follow a substantially gainful occupation as a result of service-connected disabilities.

(3) The term "retired pay" includes retainer pay, emergency officers' retirement pay, and naval pension.

(Added P.L. 106–65, § 658(a)(1), Oct. 5, 1999, 113 Stat. 668.)

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2001, and shall apply to months that begin on or after that date. No benefit may be paid under section 1413 of title 10, United States Code, to any person by reason of the amendment made by subsection (a) for any period before that date.

CHAPTER 73—ANNUITIES BASED ON RETIRED OR RETAINER PAY

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SUBCHAPTER I—RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN

Sec.
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1445. Correction of administrative deficiencies.
1446. Restriction on participation.

§ 1431. Election of annuity: members of armed forces

(a) This section applies to all members of the armed forces except—

(1) members whose names are on a retired list other than a list maintained under section 12774(a) of this title;

(2) cadets at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy; and

(3) midshipmen.

(b) To provide an annuity under section 1434 of this title, a person covered by subsection (a) may elect to receive a reduced amount of the retired pay or retainer pay to which he may become entitled as a result of service in his armed force. Except as otherwise provided in this section, unless it is made before he completes nineteen years of service for which he is entitled to credit in the computation of his basic pay, the election must be made at least two years before the first day for which retired pay or retainer pay is granted. However, if, because of military operations, a member is assigned to an isolated station or is missing, interned in a neutral country, captured by a hostile force, or beleaguered or besieged, and for that reason is unable to make an election before

completing nineteen years of that service, he may make the election, to become effective immediately, within one year after he ceases to be assigned to that station or returns to the jurisdiction of his armed force, as the case may be. A member to whom retired pay or retainer pay is granted retroactively, and who is otherwise eligible to make an election, may make the election within ninety days after receiving notice that such pay has been granted to him. An election made after August 13, 1968, is not effective if—

(1) the elector dies during the first thirty-day period he is entitled to retired pay as a result of a physical condition which led to his being granted retired pay under chapter 61 of title 10 with a disability of 100 per centum under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination of the per centum of his disability;

(2) the disability was not the result of injury or disease received in line of duty as a direct result of armed conflict; and

(3) his surviving spouse or children are entitled to dependency and indemnity compensation under chapter 13 of title 38 based upon his death.

(c) An election may be changed or revoked by the elector before the first day for which retired or retainer pay is granted. Unless it is made on the basis of restored mental competency under section 1433 of this title, or unless it is made before the elector completes nineteen years of service for which he is entitled to credit in the computation of his basic pay (in which case only the latest change or revocation shall be effective), the change or revocation is not effective if it is made less than two years before the first day for which retired or retainer pay is granted. The elector may, however, before the first day for which retired or retainer pay is granted, change or revoke his election (provided the change does not increase the amount of the annuity elected) to reflect a change in the marital or dependency status of the member or his family that is caused by death, divorce, annulment, remarriage, or acquisition of a child, if such change or revocation of election is made within two years of such change in marital or dependency status.

(d) If an election made under this section is found to be void for any reason except fraud or willful intent of the member making the election, he may make a corrected election at any time within 90 days after he is notified in writing that the election is void. A corrected election made under this subsection is effective as of the date of the voided election it replaces.

(Aug. 10, 1956, ch. 1041, 70A Stat. 108; Sept. 2, 1958, P.L. 85–861, § 33(a)(11), 72 Stat. 1565; Oct. 4, 1961, P.L. 87–381, § 2, 75 Stat. 810; Aug. 13, 1968, P.L. 90–485, § 1(1), (2), 82 Stat. 751; Dec. 12, 1980, P.L. 96–513, § 511(55), 94 Stat. 2925; Nov. 8, 1985, P.L. 99–145, § 1301(a)(2), 99 Stat. 735; Nov. 29, 1989, P.L. 101–189, § 1621(a)(1), 103 Stat. 1602; P.L. 104–106, § 1501(c)(17), Feb. 10, 1996, 110 Stat. 499.)

§ 1432. Election of annuity: former members of armed forces

A person who was a former member of an armed force on November 1, 1953, and who is granted retired or retainer pay after that date, may, at the time he is granted that pay, make an election as provided in section 1431 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 109.)

§ 1433. Mental incompetency of member

If a person who would be entitled to make an election under section 1431 or 1432 of this title is determined to be mentally incompetent by medical officers of the armed force concerned or of the Department of Veterans Affairs, or by a court of competent jurisdiction, and for that reason cannot make the election within the prescribed time, the Secretary concerned may make an election for that person upon the request of his spouse or, if there is no spouse, of his children who would be eligible to be made beneficiaries under section 1435 of this title. If the person for whom the Secretary has made an election is later determined to be mentally competent by medical officers of the Department of Veterans Affairs or by a court of competent jurisdiction, he may, within 180 days after that determination, change or revoke that election. However, deductions made from his retired or retainer pay before that date may not be refunded.

(Aug. 10, 1956, ch. 1041, 70A Stat. 109; Nov. 29, 1989, P.L. 101–189, § 1621(a)(1), 103 Stat. 1602.)

§ 1434. Kinds of annuities that may be elected

(a) The annuity that a person is entitled to elect under section 1431 or 1432 of this title shall, in conformance with actuarial tables selected by the Board of Actuaries under section 1436(a) of this title, be the amount specified by the elector at the time of the election, but not more than 50 percent nor less than 12½ percent of his retired or retainer pay, in no case less than $25. He may make the annuity payable—

(1) to, or on behalf of, the surviving spouse, ending when the spouse dies or, if the spouse remarries before age 60, when the spouse remarries;

(2) in equal shares to, or on behalf of, the surviving children eligible for the annuity at the time each payment is due, ending when there is no surviving eligible child; or

(3) to, or on behalf of, the surviving spouse, and after the death of that spouse or the remarriage of that spouse before age 60, in equal shares to, or on behalf of, the surviving eligible children, ending when there is no surviving eligible child.

(b) A person may elect to provide both the annuity provided in clause (1) of subsection (a) and that provided in clause (2) of subsection (a), but the combined amount of the annuities may not be more than 50 percent nor less than 12½ percent of his retired or retainer pay but in no case less than $25.

(c) An election of any annuity under clause (1) or (2) of subsection (a), or any combination of annuities under subsection (b), shall provide that no deduction may be made from the elector's retired or retainer pay after the last day of the month in which there is no beneficiary who would be eligible for the annuity if the elector died. For the purposes of the preceding sentence, a child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) who is at least eighteen, but under twenty-three years of age, and who is not pursuing a course of study or training defined in section 1435 of this title, shall be considered an eligible beneficiary unless the Secretary concerned approves an application sub-

mitted by the member under section 1436(b)(4) of this title. An election of an annuity under clause (3) of subsection (a) shall provide that no deduction may be made from the elector's retired or retainer pay after the last day of the month in which there is no eligible spouse because of death or divorce.

(d) Under regulations prescribed under section 1444(a) of this title, a person may, before or after the first day for which retired or retainer pay is granted, provided for allocating, during the period of the surviving spouse's eligibility, a part of the annuity under subsection (a)(3) for payment to those of his surviving children who are not children of that spouse.

(e) Whenever there is an increase in retired and retainer pay under section 1401a of this title, each annuity that is payable under this subchapter on the day before the effective date of that increase to a spouse or child of a member who died on or before March 20, 1974, shall be increased by the same percentage as the percentage of that increase, effective on the effective date of that increase.

(Aug. 10, 1956, ch. 1041, 70A Stat. 109; Oct. 4, 1961, P.L. 87–381, § 3, 75 Stat. 811; Aug. 13, 1968, P.L. 90–485, § 1(3), 82 Stat. 751; Sept. 30, 1978, P.L. 95–397, § 101(a), 92 Stat. 843; Dec. 12, 1980, P.L. 96–513, § 511(56), 94 Stat. 2925.)

§ 1435. Eligible beneficiaries

Only the following persons are eligible to be made the beneficiaries of, or to receive payments under, an annuity elected under this subchapter by a member of the armed forces:

(1) The spouse of the member on the date when the member is retired or becomes entitled to retired or retainer pay or, if the member was already retired or entitled to retired or retainer pay on November 1, 1953, the spouse on that date.

(2) The children of the member who are—

(A) unmarried;

(B) under eighteen years of age, or incapable of supporting themselves because of a mental defect or physical incapacity existing before their eighteenth birthday, or at least eighteen, but under twenty-three, years of age and pursuing a full-time course of study or training in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution;

(C) legitimate or adopted children of, or stepchildren in fact dependent for their support upon, the member;

(D) living on the date when the member is retired or becomes entitled to retired or retainer pay or, if the member was already retired or entitled to retired or retainer pay on November 1, 1953, living on that date; and

(E) born on or before the date prescribed in clause (D).

For the purposes of clause (2)(B), a child is considered to be pursuing a full-time course of study or training during an interval between school years that does not exceed one hundred and fifty days if he has demonstrated to the satisfaction of the Secretary concerned that he has a bonafide intention of commencing, resuming, or continuing to pursue a full-time course of study or training in

a recognized educational institution immediately after that interval.

(Aug. 10, 1956, ch. 1041, 70A Stat. 110; Aug. 13, 1968, P.L. 90–485, § 1(4), (5), 82 Stat. 752; Sept. 21, 1972, P.L. 92–425, § 1(2)(A), 86 Stat. 706.)

§ 1436. Computation of reduction in retired pay; withdrawal for severe financial hardship

(a) The reduction in the retired or retainer pay of any person who elects an annuity under this subchapter shall be computed by the armed force concerned as of the date when the person becomes eligible for that pay but without regard to any increase in that pay to reflect changes in the Consumer Price Index. It shall be computed under an actuarial equivalent method based on (1) appropriate actuarial tables selected by the Board of Actuaries, and (2) an interest rate of 3 percent a year, or such other rate as the Secretary of the Treasury, after considering the average yield on outstanding marketable long-term obligations of the United States during the preceding six months, may specify by August 1 of any year for the following year. The method and tables shall be those in effect on the date as of which the computation is made.

(b) Under regulations prescribed under section 1444(a) of this title, the Secretary concerned may, upon application by the retired member, allow the member—

(1) to reduce the amount of the annuity specified by him under section 1434(a) and 1434(b) of this title but to not less than the prescribed minimum; or

(2) to withdraw from participation in an annuity program under this title; or

(3) to elect the annuity provided under clause (1) of section 1434(a) of this title in place of the annuity provided under clause (3) of such section, if on the first day for which retired or retainer pay is granted the member had in effect a valid election under clause (3) of such section, and he does not have a child beneficiary who would be eligible for the annuity provided under clause (3) of such section. For this purpose, a child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) who is at least eighteen, but under twenty-three years of age shall not be considered an eligible beneficiary; or

(4) to elect that a child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) who is at least eighteen, but under twenty-three years of age shall not be considered eligible for the annuity provided under clause (2) of section 1434(a) of this title, or for an annuity provided under section 1434(b) of this title, if on the first day for which retired or retainer pay is granted the member had in effect a valid election under clause (2) of section 1434(a) of this title, or under section 1434(b) of this title.

A retired member may not reduce an annuity under clause (1) of this subsection, or withdraw under clause (2) of this subsection, earlier than the first day of the seventh calendar month beginning after he applies for reduction or withdrawal. A change of election

under clause (3) of this subsection shall be effective on the first day of the month following the month in which application is made. An election under clause (4) of this subsection shall be effective on the first day of the month following the month in which application is made and, if on the effective date there is no surviving child who would be eligible for an annuity provided under clause (2) of section 1434(a), or under section 1434(b), of this title if the elector died, no deduction shall be made for such an annuity to, or on behalf of, a child from the elector's retired or retainer pay for that month or any subsequent month. No amounts by which a member's retired or retainer pay is reduced prior to the effective date of a reduction of annuity, withdrawal, change of election, or election under this subsection may be refunded to, or credited on behalf of, the member by virtue of an application made by him under this subsection.

(Aug. 10, 1956, ch. 1041, 70A Stat. 110; Oct. 4, 1961, P.L. 87–381, § 4, 75 Stat. 811; Dec. 6, 1967, P.L. 90–207, § 2(a)(3), 81 Stat. 653; Aug. 13, 1968, P.L. 90–485, § 1(6), 82 Stat. 753; Sept. 21, 1972, P.L. 92–425, § 1(2)(A), 86 Stat. 706.)

§ 1436a. Coverage paid up at 30 years and age 70

Effective October 1, 2008, a reduction under this subchapter in the retired or retainer pay of a person electing an annuity under this subchapter may not be made for any month after the later of—

(1) the month that is the 360th month for which that person's retired or retainer pay is reduced pursuant to such an election; and

(2) the month during which that person attains 70 years of age.

(Added P.L. 106–65, § 655(a), Oct. 5, 1999, 113 Stat. 667.)

§ 1437. Payment of annuity

(a) Except as provided in subsections (b) and (c), each annuity payable under this subchapter accrues as of the first day of the month in which the person upon whose pay the annuity is based dies. Payments shall be made in equal installments and not later than the fifteenth day of each month following that month. However, no annuity accrues for the month in which entitlement thereto ends. The monthly amount of an annuity payable under this subchapter, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(b) Each annuity payable to or on behalf of an eligible child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) as defined in section 1435(2)(B) of this title who is at least eighteen years of age and pursuing a full-time course of study or training at a recognized educational institution, accrues—

(1) as of the first day of the month in which the member upon whose pay the annuity is based dies, if the eligible child's eighteenth birthday occurs in the same or a preceding month.

(2) as of the first day of the month in which the eighteenth birthday of an eligible child occurs, if the member upon whose pay the annuity is based died in a preceding month.

(3) as of the first day of the month in which a child first becomes or again becomes eligible, if that eligible child's eight-

eenth birthday and the death of the member upon whose pay the annuity is based both occurred in a preceding month or months.

However, no such annuity is payable or accrues for any month before November 1, 1968.

(c)(1) Upon application of the beneficiary of a member entitled to retired or retainer pay whose retired or retainer pay has been suspended because the member has been determined to be missing, the Secretary concerned may determine for purposes of this subchapter that the member is presumed dead. Any such determination shall be made in accordance with regulations prescribed under section 1444(a) of this title. The Secretary concerned may not make a determination for purposes of this subchapter that a member is presumed dead unless he finds—

(A) that the member has been missing for at least 30 days; and

(B) that the circumstances under which the member is missing would lead a reasonably prudent person to conclude that the member is dead.

(2) Upon a determination under paragraph (1) with respect to a member, an annuity otherwise payable under this subchapter shall be paid as if the member died on the date as of which the retired or retainer pay of the member was suspended.

(3)(A) If, after a determination under paragraph (1), the Secretary concerned determines that the member is alive, any annuity being paid under this subchapter by reason of this subsection shall be promptly terminated and the total amount of any annuity payments made by reason of this subsection shall constitute a debt to the United States which may be collected or offset—

(i) from any retired or retainer pay otherwise payable to the member;

(ii) if the member is entitled to compensation under chapter 11 of title 38, from that compensation; or

(iii) if the member is entitled to any other payment from the United States, from that payment.

(B) If the member dies before the full recovery of the amount of annuity payments described in subparagraph (A) has been made by the United States, the remaining amount of such annuity payments may be collected from the member's beneficiary under this subchapter if that beneficiary was the recipient of the annuity payments made by reason of this subsection.

(Aug. 10, 1956, ch. 1041, 70A Stat. 110; Aug. 13, 1968, P.L. 90–485, § 1(7), 82 Stat. 753; Sept. 21, 1972, P.L. 92–425, § 1(2)(A), 86 Stat. 706; Dec. 12, 1980, P.L. 96–513, § 511(57), 94 Stat. 2925; Sept. 24, 1983, P.L. 98–94, § 922, 97 Stat. 642; Oct. 19, 1984, P.L. 98–525, § 642(a)(1), 98 Stat. 2545; Nov. 8, 1985, P.L. 99–145, § 1303(a)(9), 99 Stat. 739.)

§ 1438. Deposits for amounts not deducted

If, for any period, a person who has been retired or has become entitled to retired or retainer pay, and who has elected an annuity under this subchapter, is not entitled to retired or retainer pay, he must deposit in the Treasury the amount that would otherwise have been deducted from his pay for that period to provide the annuity.

(Aug. 10, 1956, ch. 1041, 70A Stat. 110; Sept. 21, 1972, P.L. 92–425, § 1(2)(A), 86 Stat. 706.)

§ 1439. Refund of amounts deducted from retired pay

If a person whose name is on the temporary disability retired list of an armed force, and who has elected an annuity under this subchapter, has his name removed from that list for any reason other than retirement or grant of retired pay, he is entitled to a refund of the difference between the amount by which his retired pay was reduced to provide the annuity and the cost of an amount of term insurance equal to the protection provided for his dependents during the period that he was on that list.

(Aug. 10, 1956, ch. 1041, 70A Stat. 111; Sept. 21, 1972, P.L. 92–425, § 1(2)(A), 86 Stat. 706.)

§ 1440. Annuities not subject to legal process

Except as provided in section 1437(c)(3)(B) of this title, no annuity payable under this subchapter is assignable or subject to execution, levy, attachment, garnishment, or other legal process.

(Aug. 10, 1956, ch. 1041, 70A Stat. 111; Sept. 21, 1972, P.L. 92–425, § 1(2)(A), 86 Stat. 706; Oct. 19, 1984, P.L. 98–525, § 642(a)(2), 98 Stat. 2546; Nov. 8, 1985, P.L. 99–145, § 1303(a)(10), 99 Stat. 739.)

§ 1441. Annuities in addition to other payments

An annuity under this subchapter is in addition to any pension or other payment to which the beneficiary is entitled under any other provision of law, and may not be considered as income under any law administered by the Department of Veterans Affairs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 111; Sept. 2, 1958, P.L. 85–857, § 13(v)(i), 72 Stat. 1266; Sept. 2, 1958, P.L. 85–861, § 1(31B), 72 Stat. 1452; Aug. 29, 1959, P.L. 86–211, § 8(a), 73 Stat. 436; Dec. 24, 1970, P.L. 91–588, § 8(b), 84 Stat. 1584; Sept. 21, 1972, P.L. 92–425, § 1(2)(A), 86 Stat. 706; Nov. 29, 1989, P.L. 101–189, § 1621(a)(1), 103 Stat. 1602.)

§ 1442. Recovery of annuity erroneously paid

In addition to other methods of recovery provided by law, the Secretary concerned may authorize the recovery, by deduction from later payments to a person, of any amount erroneously paid to him under this subchapter. However, recovery is not required if, in the judgment of the Secretary concerned, there has been no fault by the person to whom the amount was erroneously paid and recovery would be contrary to the purposes of this subchapter or against equity and good conscience.

(Aug. 10, 1956, ch. 1041, 70A Stat. 111; Sept. 21, 1972, P.L. 92–425, § 1(2)(A), 86 Stat. 706; Oct. 19, 1996, P.L. 104–316, § 105(a), 110 Stat. 3830.)

[§ 1443. Repealed. P.L. 92–425, § 1(2)(B), Sept. 21, 1972, 86 Stat. 706]

§ 1444. Regulations; determinations

(a) The President shall prescribe regulations to carry out this subchapter. Those regulations shall, so far as practicable, be uniform for the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service.

(b) Determinations and certifications of eligibility for, and payments of, annuities and other payments or refunds under this subchapter shall be made by the department concerned. However, in the case of a department other than a military department, payments shall be made through the disbursing facilities of the Department of the Treasury.

(Aug. 10, 1956, ch. 1041, 70A Stat. 111; Oct. 4, 1961, P.L. 87–381, § 5, 75 Stat. 811; Nov. 2, 1966, P.L. 89–718, § 8(a), 80 Stat. 1117; Sept. 21, 1972, P.L. 92–425, § 1(2)(A), (C), 86 Stat. 706; Dec. 12, 1980, P.L. 96–513, § 511(58), 94 Stat. 2925.)

§ 1444a. Regulations regarding payment of annuity to a representative payee

(a) The regulations prescribed pursuant to section 1444(a) of this title shall provide procedures for the payment of an annuity under this subchapter in the case of—

(1) a person for whom a guardian or other fiduciary has been appointed; and

(2) a minor, mentally incompetent, or otherwise legally disabled person for whom a guardian or other fiduciary has not been appointed.

(b) Those regulations may include the provisions set out in section 1455(d)(2) of this title.

(c) An annuity paid to a person on behalf of an annuitant in accordance with the regulations prescribed pursuant to subsection (a) discharges the obligation of the United States for payment to the annuitant of the amount of the annuity so paid.

(Added P.L. 102–190, § 654(b), Dec. 5, 1991, 105 Stat. 1390; amended P.L. 105–85, § 1073(a)(26), Nov. 18, 1997, 111 Stat. 1901.)

§ 1445. Correction of administrative deficiencies

Whenever he considers it necessary, the Secretary concerned may, under regulations prescribed under section 1444(a) of this title, correct any election, or any change or revocation of an election, under this subchapter when he considers it necessary to correct an administrative error. Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.

(Added P.L. 87–381, § 6(1), Oct. 4, 1961, 75 Stat. 811; amended P.L. 92–425, § 1(2) (A), Sept. 21, 1972, 86 Stat. 706.)

§ 1446. Restriction on participation

(a) Notwithstanding section 1441 of this title, if a person—

(1) has made an election under this subchapter; and

(2) is retired for physical disability before he completes 19 years of service for which he is entitled to credit in the computation of his basic pay;

and thereafter dies, his beneficiaries are not entitled to the annuities provided under this subchapter until they give proof to the department concerned that they are not eligible for benefits under chapter 11 or 13 of title 38. If the beneficiaries are not eligible for benefits under chapter 11 or 13 of title 38, the annuity shall begin on the first day of the month in which the death occurs.

(b) Whenever the beneficiaries on whose behalf the election was made are restricted, under subsection (a), from participating in the annuities provided under this subchapter, the amount withheld

from the elector's retired or retainer pay as a result of an election under this subchapter shall be refunded to the beneficiaries, less the amount of any annuities paid under this subchapter, and in either case without interest.

(Added P.L. 87–381, § 6(1), Oct. 4, 1961, 75 Stat. 811; amended P.L. 90–485, § 1(8), Aug. 13, 1968, 82 Stat. 754; P.L. 92–425, § 1(2)(A), Sept. 21, 1972, 86 Stat. 706.)

SUBCHAPTER II—SURVIVOR BENEFIT PLAN

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§ 1447. Definitions

In this subchapter:

(1) PLAN.—The term "Plan" means the Survivor Benefit Plan established by this subchapter.

(2) STANDARD ANNUITY.—The term "standard annuity" means an annuity provided by virtue of eligibility under section 1448(a)(1)(A) of this title.

(3) RESERVE-COMPONENT ANNUITY.—The term "reserve-component annuity" means an annuity provided by virtue of eligibility under section 1448(a)(1)(B) of this title.

(4) RETIRED PAY.—The term "retired pay" includes retainer pay paid under section 6330 of this title.

(5) RESERVE-COMPONENT RETIRED PAY.—The term "reserve-component retired pay" means retired pay under chapter 1223 of this title (or under chapter 67 of this title as in effect before the effective date of the Reserve Officer Personnel Management Act).

(6) BASE AMOUNT.—The term "base amount" means the following:

(A) FULL AMOUNT UNDER STANDARD ANNUITY.—In the case of a person who dies after becoming entitled to retired pay, such term means the amount of monthly retired pay (determined without regard to any reduction under section 1409(b)(2) of this title) to which the person—

(i) was entitled when he became eligible for that pay; or

(ii) later became entitled by being advanced on the retired list, performing active duty, or being transferred from the temporary disability retired list to the permanent disability retired list.

(B) FULL AMOUNT UNDER RESERVE-COMPONENT ANNUITY.—In the case of a person who would have become eligible for reserve-component retired pay but for the fact that he died before becoming 60 years of age, such term

means the amount of monthly retired pay for which the person would have been eligible—

(i) if he had been 60 years of age on the date of his death, for purposes of an annuity to become effective on the day after his death in accordance with a designation made under section 1448(e) of this title; or

(ii) upon becoming 60 years of age (if he had lived to that age), for purposes of an annuity to become effective on the 60th anniversary of his birth in accordance with a designation made under section 1448(e) of this title.

(C) REDUCED AMOUNT.—Such term means any amount less than the amount otherwise applicable under subparagraph (A) or (B) with respect to an annuity provided under the Plan but which is not less than $300 and which is designated by the person (with the concurrence of the person's spouse, if required under section 1448(a)(3) of this title) providing the annuity on or before—

(i) the first day for which he becomes eligible for retired pay, in the case of a person providing a standard annuity, or

(ii) the end of the 90-day period beginning on the date on which he receives the notification required by section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay, in the case of a person providing a reserve-component annuity.

(7) WIDOW.—The term "widow" means the surviving wife of a person who, if not married to the person at the time he became eligible for retired pay—

(A) was married to him for at least one year immediately before his death; or

(B) is the mother of issue by that marriage.

(8) WIDOWER.—The term "widower" means the surviving husband of a person who, if not married to the person at the time she became eligible for retired pay—

(A) was married to her for at least one year immediately before her death; or

(B) is the father of issue by that marriage.

(9) SURVIVING SPOUSE.—The term "surviving spouse" means a widow or widower.

(10) FORMER SPOUSE.—The term "former spouse" means the surviving former husband or wife of a person who is eligible to participate in the Plan.

(11) DEPENDENT CHILD.—

(A) IN GENERAL.—The term "dependent child" means a person who—

(i) is unmarried;

(ii) is (I) under 18 years of age, (II) at least 18, but under 22, years of age and pursuing a full-time course of study or training in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution, or (III) incapable of self support because of a

mental or physical incapacity existing before the person's eighteenth birthday or incurred on or after that birthday, but before the person's twenty-second birthday, while pursuing such a full-time course of study or training; and

(iii) is the child of a person to whom the Plan applies, including (I) an adopted child, and (II) a stepchild, foster child, or recognized natural child who lived with that person in a regular parent-child relationship.

(B) SPECIAL RULES FOR COLLEGE STUDENTS.—For the purpose of subparagraph (A), a child whose twenty-second birthday occurs before July 1 or after August 31 of a calendar year, and while regularly pursuing such a course of study or training, is considered to have become 22 years of age on the first day of July after that birthday. A child who is a student is considered not to have ceased to be a student during an interim between school years if the interim is not more than 150 days and if the child shows to the satisfaction of the Secretary of Defense that the child has a bona fide intention of continuing to pursue a course of study or training in the same or a different school during the school semester (or other period into which the school year is divided) immediately after the interim.

(C) FOSTER CHILDREN.—A foster child, to qualify under this paragraph as the dependent child of a person to whom the Plan applies, must, at the time of the death of that person, also reside with, and receive over one-half of his support from, that person, and not be cared for under a social agency contract. The temporary absence of a foster child from the residence of that person, while a student as described in this paragraph, shall not be considered to affect the residence of such a foster child.

(12) COURT.—The term "court" has the meaning given that term by section 1408(a)(1) of this title.

(13) COURT ORDER.—

(A) IN GENERAL.—The term "court order" means a court's final decree of divorce, dissolution, or annulment or a court ordered, ratified, or approved property settlement incident to such a decree (including a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation, or of a court ordered, ratified, or approved property settlement agreement incident to such previously issued decree).

(B) FINAL DECREE.—The term "final decree" means a decree from which no appeal may be taken or from which no appeal has been taken within the time allowed for the taking of such appeals under the laws applicable to such appeals, or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals.

(C) REGULAR ON ITS FACE.—The term "regular on its face", when used in connection with a court order, means

a court order that meets the conditions prescribed in section 1408(b)(2) of this title.

(Added P.L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 706; amended P.L. 94–496, § 1(1), Oct. 14, 1976, 90 Stat. 2375; P.L. 95–397, § 201, Sept. 30, 1978, 92 Stat. 843; P.L. 96–402, § 2, Oct. 9, 1980, 94 Stat. 1705; P.L. 97–252, § 1003(a), Sept. 8, 1982, 96 Stat. 735; P.L. 98–94, § 941(c)(1), Sept. 24, 1983, 97 Stat. 653; P.L. 145, §§ 719(1)(2), 721(b), Nov. 8, 1985, 99 Stat. 675, 676; P.L. 99–348, § 301(1), July 1, 1986, 100 Stat. 702; P.L. 99–661, § 1343(a)(8)(A), Nov. 14, 1986, 100 Stat. 3992; P.L. 100–180, § 1231(17), Dec. 4, 1987, 101 Stat. 1161; P.L. 101–189, § 1407(a), Nov. 29, 1989, 103 Stat. 1588; P.L. 103–337, § 1671(d), Oct. 5, 1994, 108 Stat. 3014–3015; P.L. 104–201, § 634, Sept. 23, 1996, 110 Stat. 2551.)

§ 1448. Application of Plan

(a) GENERAL RULES FOR PARTICIPATION IN THE PLAN.—

(1) NAME OF PLAN; ELIGIBLE PARTICIPANTS.—The program established by this subchapter shall be known as the Survivor Benefit Plan. The following persons are eligible to participate in the Plan:

(A) Persons entitled to retired pay.

(B) Persons who would be eligible for reserve-component retired pay but for the fact that they are under 60 years of age.

(2) PARTICIPANTS IN THE PLAN.—The Plan applies to the following persons, who shall be participants in the Plan:

(A) STANDARD ANNUITY PARTICIPANTS.—A person who is eligible to participate in the Plan under paragraph (1)(A) and who is married or has a dependent child when he becomes entitled to retired pay, unless he elects (with his spouse's concurrence, if required under paragraph (3)) not to participate in the Plan before the first day for which he is eligible for that pay.

(B) RESERVE-COMPONENT ANNUITY PARTICIPANTS.—A person who (i) is eligible to participate in the Plan under paragraph (1)(B), and (ii) is married or has a dependent child when he is notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay, unless the person elects (with his spouse's concurrence, if required under paragraph (3)) not to participate in the Plan before the end of the 90-day period beginning on the date on which he receives that notification.

A person who elects under subparagraph (B) not to participate in the Plan remains eligible, upon reaching 60 years of age and otherwise becoming entitled to retired pay, to participate in the Plan in accordance with eligibility under paragraph (1)(A).

(3) ELECTIONS.—

(A) SPOUSAL CONSENT FOR CERTAIN ELECTIONS RESPECTING STANDARD ANNUITY.—A married person who is eligible to provide a standard annuity may not without the concurrence of the person's spouse elect—

(i) not to participate in the Plan;

(ii) to provide an annuity for the person's spouse at less than the maximum level; or

(iii) to provide an annuity for a dependent child but not for the person's spouse.

(B) SPOUSAL CONSENT FOR CERTAIN ELECTIONS RESPECTING RESERVE-COMPONENT ANNUITY.—A married per-

son who is eligible to provide a reserve-component annuity may not without the concurrence of the person's spouse elect—

(i) not to participate in the Plan;

(ii) to designate under subsection (e)(2) the effective date for commencement of annuity payments under the Plan in the event that the member dies before becoming 60 years of age to be the 60th anniversary of the member's birth (rather than the day after the date of the member's death);

(iii) to provide an annuity for the person's spouse at less than the maximum level; or

(iv) to provide an annuity for a dependent child but not for the person's spouse.

(C) EXCEPTION WHEN SPOUSE UNAVAILABLE.—A person may make an election described in subparagraph (A) or (B) without the concurrence of the person's spouse if the person establishes to the satisfaction of the Secretary concerned—

(i) that the spouse's whereabouts cannot be determined; or

(ii) that, due to exceptional circumstances, requiring the person to seek the spouse's consent would otherwise be inappropriate.

(D) CONSTRUCTION WITH FORMER SPOUSE ELECTION PROVISIONS.—This paragraph does not affect any right or obligation to elect to provide an annuity for a former spouse (or for a former spouse and dependent child) under subsection (b)(2).

(E) NOTICE TO SPOUSE OF ELECTION TO PROVIDE FORMER SPOUSE ANNUITY.—If a married person who is eligible to provide a standard annuity elects to provide an annuity for a former spouse (or for a former spouse and dependent child) under subsection (b)(2), that person's spouse shall be notified of that election.

(4) IRREVOCABILITY OF ELECTIONS.—

(A) STANDARD ANNUITY.—An election under paragraph (2)(A) is irrevocable if not revoked before the date on which the person first becomes entitled to retired pay.

(B) RESERVE-COMPONENT ANNUITY.—An election under paragraph (2)(B) is irrevocable if not revoked before the end of the 90-day period referred to in that paragraph.

(5) PARTICIPATION BY PERSON MARRYING AFTER RETIREMENT, ETC.—

(A) ELECTION TO PARTICIPATE IN PLAN.—A person who is not married and has no dependent child upon becoming eligible to participate in the Plan but who later marries or acquires a dependent child may elect to participate in the Plan.

(B) MANNER AND TIME OF ELECTION.—Such an election must be written, signed by the person making the election, and received by the Secretary concerned within one year after the date on which that person marries or acquires that dependent child.

(C) LIMITATION ON REVOCATION OF ELECTION.—Such an election may not be revoked except in accordance with subsection (b)(3).

(D) EFFECTIVE DATE OF ELECTION.—The election is effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

(E) DESIGNATION IF RCSBP ELECTION.—In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).

(6) ELECTION OUT OF PLAN BY PERSON WITH SPOUSE COVERAGE WHO REMARRIES.—

(A) GENERAL RULE.—A person—

(i) who is a participant in the Plan and is providing coverage under the Plan for a spouse (or a spouse and child);

(ii) who does not have an eligible spouse beneficiary under the Plan; and

(iii) who remarries,

may elect not to provide coverage under the Plan for the person's spouse.

(B) EFFECT OF ELECTION ON RETIRED PAY.—If such an election is made, reductions in the retired pay of that person under section 1452 of this title shall not be made.

(C) TERMS AND CONDITIONS OF ELECTION.—An election under this paragraph—

(i) is irrevocable;

(ii) shall be made within one year after the person's remarriage; and

(iii) shall be made in such form and manner as may be prescribed in regulations under section 1455 of this title.

(D) NOTICE TO SPOUSE.—If a person makes an election under this paragraph—

(i) not to participate in the Plan;

(ii) to provide an annuity for the person's spouse at less than the maximum level; or

(iii) to provide an annuity for a dependent child but not for the person's spouse,

the person's spouse shall be notified of that election.

(E) CONSTRUCTION WITH FORMER SPOUSE ELECTION PROVISIONS.—This paragraph does not affect any right or obligation to elect to provide an annuity to a former spouse under subsection (b).

(b) INSURABLE INTEREST AND FORMER SPOUSE COVERAGE.—

(1) COVERAGE FOR PERSON WITH INSURABLE INTEREST.—

(A) GENERAL RULE.—A person who is not married and does not have a dependent child upon becoming eligible to participate in the Plan may elect to provide an annuity under the Plan to a natural person with an insurable interest in that person. In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).

(B) TERMINATION OF COVERAGE.—An election under subparagraph (A) for a beneficiary who is not the former spouse of the person providing the annuity may be terminated. Any such termination shall be made by a participant by the submission to the Secretary concerned of a request to discontinue participation in the Plan, and such participation in the Plan shall be discontinued effective on the first day of the first month following the month in which the request is received by the Secretary concerned. Effective on such date, the Secretary concerned shall discontinue the reduction being made in such person's retired pay on account of participation in the Plan or, in the case of a person who has been required to make deposits in the Treasury on account of participation in the Plan, such person may discontinue making such deposits effective on such date.

(C) FORM FOR DISCONTINUATION.—A request under subparagraph (B) to discontinue participation in the Plan shall be in such form and shall contain such information as may be required under regulations prescribed by the Secretary of Defense.

(D) WITHDRAWAL OF REQUEST FOR DISCONTINUATION.—The Secretary concerned shall furnish promptly to each person who submits a request under subparagraph (B) to discontinue participation in the Plan a written statement of the advantages and disadvantages of participating in the Plan and the possible disadvantages of discontinuing participation. A person may withdraw the request to discontinue participation if withdrawn within 30 days after having been submitted to the Secretary concerned.

(E) CONSEQUENCES OF DISCONTINUATION.—Once participation is discontinued, benefits may not be paid in conjunction with the earlier participation in the Plan and premiums paid may not be refunded. Participation in the Plan may not later be resumed except through a qualified election under paragraph (5) of subsection (a).

(2) FORMER SPOUSE COVERAGE UPON BECOMING A PARTICIPANT IN THE PLAN.—

(A) GENERAL RULE.—A person who has a former spouse upon becoming eligible to participate in the Plan may elect to provide an annuity to that former spouse.

(B) EFFECT OF FORMER SPOUSE ELECTION ON SPOUSE OR DEPENDENT CHILD.—In the case of a person with a spouse or a dependent child, such an election prevents payment of an annuity to that spouse or child (other than a child who is a beneficiary under an election under paragraph (4)), including payment under subsection (d).

(C) DESIGNATION IF MORE THAN ONE FORMER SPOUSE.—If there is more than one former spouse, the person shall designate which former spouse is to be provided the annuity.

(D) DESIGNATION IF RCSBP ELECTION.—In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).

(3) FORMER SPOUSE COVERAGE BY PERSONS ALREADY PARTICIPATING IN PLAN.—

(A) ELECTION OF COVERAGE.—

(i) AUTHORITY FOR ELECTION.—A person—

(I) who is a participant in the Plan and is providing coverage for a spouse or a spouse and child (even though there is no beneficiary currently eligible for such coverage), and

(II) who has a former spouse who was not that person's former spouse when that person became eligible to participate in the Plan,

may (subject to subparagraph (B)) elect to provide an annuity to that former spouse.

(ii) TERMINATION OF PREVIOUS COVERAGE.—Any such election terminates any previous coverage under the Plan.

(iii) MANNER AND TIME OF ELECTION.—Any such election must be written, signed by the person making the election, and received by the Secretary concerned within one year after the date of the decree of divorce, dissolution, or annulment.

(B) LIMITATION ON ELECTION.—A person may not make an election under subparagraph (A) to provide an annuity to a former spouse who that person married after becoming eligible for retired pay unless—

(i) the person was married to that former spouse for at least one year, or

(ii) that former spouse is the parent of issue by that marriage.

(C) IRREVOCABILITY, ETC.—An election under this paragraph may not be revoked except in accordance with section 1450(f) of this title. Such an election is effective as of the first day of the first calendar month following the month in which it is received by the Secretary concerned.

(D) NOTICE TO SPOUSE.—If a person who is married makes an election to provide an annuity to a former spouse under this paragraph, that person's spouse shall be notified of the election.

(E) EFFECTIVE DATE OF ELECTION.—An election under this paragraph is effective as of—

(i) the first day of the first month following the month in which the election is received by the Secretary concerned; or

(ii) in the case of a person required (as described in section 1450(f)(3)(B) of this title) to make the election by reason of a court order or filing the date of which is after October 16, 1998, the first day of the first month which begins after the date of that court order or filing.

(4) FORMER SPOUSE AND CHILD COVERAGE.—A person who elects to provide an annuity for a former spouse under paragraph (2) or (3) may, at the time of the election, elect to provide coverage under that annuity for both the former spouse

and a dependent child, if the child resulted from the person's marriage to that former spouse.

(5) DISCLOSURE OF WHETHER ELECTION OF FORMER SPOUSE COVERAGE IS REQUIRED.—A person who elects to provide an annuity to a former spouse under paragraph (2) or (3) shall, at the time of making the election, provide the Secretary concerned with a written statement (in a form to be prescribed by that Secretary and signed by such person and the former spouse) setting forth—

(A) whether the election is being made pursuant to the requirements of a court order; or

(B) whether the election is being made pursuant to a written agreement previously entered into voluntarily by such person as a part of, or incident to, a proceeding of divorce, dissolution, or annulment and (if so) whether such voluntary written agreement has been incorporated in, or ratified or approved by, a court order.

(c) PERSONS ON TEMPORARY DISABILITY RETIRED LIST.—The application of the Plan to a person whose name is on the temporary disability retired list terminates when his name is removed from that list and he is no longer entitled to disability retired pay.

(d) COVERAGE FOR SURVIVORS OF RETIREMENT-ELIGIBLE MEMBERS WHO DIE ON ACTIVE DUTY.—

(1) SURVIVING SPOUSE ANNUITY.—The Secretary concerned shall pay an annuity under this subchapter to the surviving spouse of a member who dies on active duty after—

(A) becoming eligible to receive retired pay;

(B) qualifying for retired pay except that he has not applied for or been granted that pay; or

(C) completing 20 years of active service but before he is eligible to retire as a commissioned officer because he has not completed 10 years of active commissioned service.

(2) DEPENDENT CHILD ANNUITY.—The Secretary concerned shall pay an annuity under this subchapter to the dependent child of a member described in paragraph (1) if there is no surviving spouse or if the member's surviving spouse subsequently dies.

(3) MANDATORY FORMER SPOUSE ANNUITY.—If a member described in paragraph (1) is required under a court order or spousal agreement to provide an annuity to a former spouse upon becoming eligible to be a participant in the Plan or has made an election under subsection (b) to provide an annuity to a former spouse, the Secretary—

(A) may not pay an annuity under paragraph (1) or (2); but

(B) shall pay an annuity to that former spouse as if the member had been a participant in the Plan and had made an election under subsection (b) to provide an annuity to the former spouse, or in accordance with that election, as the case may be, if the Secretary receives a written request from the former spouse concerned that the election be deemed to have been made in the same manner as provided in section 1450(f)(3) of this title.

(4) PRIORITY.—An annuity that may be provided under this subsection shall be provided in preference to an annuity that may be provided under any other provision of this subchapter on account of service of the same member.

(5) COMPUTATION.—The amount of an annuity under this subsection is computed under section 1451(c) of this title.

(e) DESIGNATION FOR COMMENCEMENT OF RESERVE-COMPONENT ANNUITY.—In any case in which a person is required to make a designation under this subsection, the person shall designate whether, in the event he dies before becoming 60 years of age, the annuity provided shall become effective on—

(1) the day after the date of his death; or

(2) the 60th anniversary of his birth.

(f) COVERAGE OF SURVIVORS OF PERSONS DYING WHEN ELIGIBLE TO ELECT RESERVE-COMPONENT ANNUITY.—

(1) SURVIVING SPOUSE ANNUITY.—The Secretary concerned shall pay an annuity under this subchapter to the surviving spouse of a person who is eligible to provide a reserve-component annuity and who dies—

(A) before being notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay; or

(B) during the 90-day period beginning on the date he receives notification under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay if he had not made an election under subsection (a)(2)(B) to participate in the Plan.

(2) DEPENDENT CHILD ANNUITY.—The Secretary concerned shall pay an annuity under this subchapter to the dependent child of a person described in paragraph (1) if there is no surviving spouse or if the person's surviving spouse subsequently dies.

(3) MANDATORY FORMER SPOUSE ANNUITY.—If a person described in paragraph (1) is required under a court order or spousal agreement to provide an annuity to a former spouse upon becoming eligible to be a participant in the Plan or has made an election under subsection (b) to provide an annuity to a former spouse, the Secretary—

(A) may not pay an annuity under paragraph (1) or (2); but

(B) shall pay an annuity to that former spouse as if the person had been a participant in the Plan and had made an election under subsection (b) to provide an annuity to the former spouse, or in accordance with that election, as the case may be, if the Secretary receives a written request from the former spouse concerned that the election be deemed to have been made in the same manner as provided in section 1450(f)(3) of this title.

(4) COMPUTATION.—The amount of an annuity under this subsection is computed under section 1451(c) of this title.

(g) ELECTION TO INCREASE COVERAGE UPON REMARRIAGE.—

(1) ELECTION.—A person—

(A) who is a participant in the Plan and is providing coverage under subsection (a) for a spouse or a spouse and child, but at less than the maximum level; and

(B) who remarries,

may elect, within one year of such remarriage, to increase the level of coverage provided under the Plan to a level not in excess of the current retired pay of that person.

(2) PAYMENT REQUIRED.—Such an election shall be contingent on the person paying to the United States the amount determined under paragraph (3) plus interest on such amount at a rate determined under regulations prescribed by the Secretary of Defense.

(3) AMOUNT TO BE PAID.—The amount referred to in paragraph (2) is the amount equal to the difference between—

(A) the amount that would have been withheld from such person's retired pay under section 1452 of this title if the higher level of coverage had been in effect from the time the person became a participant in the Plan; and

(B) the amount of such person's retired pay actually withheld.

(4) MANNER OF MAKING ELECTION.—An election under paragraph (1) shall be made in such manner as the Secretary shall prescribe and shall become effective upon receipt of the payment required by paragraph (2).

(5) DISPOSITION OF PAYMENTS.—A payment received under this subsection by the Secretary of Defense shall be deposited into the Department of Defense Military Retirement Fund. Any other payment received under this subsection shall be deposited in the Treasury as miscellaneous receipts.

(Added P.L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 707; amended P.L. 94–496, § 1(2), Oct. 14, 1976, 90 Stat. 2375; P.L. 95–397, § 202, Sept. 30, 1978, 92 Stat. 844; P.L. 97–252, § 1003(b), Sept. 8, 1982, 96 Stat. 735; P.L. 97–295, § 1(18), Oct. 12, 1982, 96 Stat. 1290; P.L. 98–94, § 941(a)(1), (a)(2), (c)(2), Sept. 24, 1983, 97 Stat. 652; P.L. 99–145, §§ 513(b), 712(a), 713(a), 715, 716, 719(3), (8)(A), 721(a), Nov. 8, 1985, 99 Stat. 628, 670, 671, 673–676; P.L. 99–661, §§ 641(b)(1), 642(a), 1343(a)(8)(B), Nov. 14, 1986, 100 Stat. 3885, 3886, 3992; P.L. 101–189, § 1407(a) (2), (3), Nov. 29, 1989, 103 Stat. 1588; P.L. 103–337, §§ 638, 1671(d)(2), Oct. 5, 1994, 108 Stat. 2791, 3015; P.L. 104–201, § 634, Sept. 23, 1996, 110 Stat. 2553; P.L. 105–85, § 1073(a)(27), Nov. 18, 1997, 111 Stat. 1901; P.L. 105–261, § 643(a), Oct. 17, 1998, 112 Stat. 2047; P.L. 106–65, § 1066(a)(12), Oct. 5, 1999, 113 Stat. 771; P.L. 106–398, § 1[655(a)–(c)(3), 1087(a)(10)], Oct. 30, 2000, 114 Stat. 1654, 1654A–165, 1654A–290.)

§ 1448a. Election to discontinue participation: one-year opportunity after second anniversary of commencement of payment of retired pay

(a) AUTHORITY.—A participant in the Plan may, subject to the provisions of this section, elect to discontinue participation in the Plan at any time during the one-year period beginning on the second anniversary of the date on which payment of retired pay to the participant commences.

(b) CONCURRENCE OF SPOUSE.—

(1) CONCURRENCE REQUIRED.—A married participant may not (except as provided in paragraph (2)) make an election under subsection (a) without the concurrence of the participant's spouse.

(2) EXCEPTIONS.—A participant may make such an election without the concurrence of the participant's spouse by establishing to the satisfaction of the Secretary concerned that one

of the conditions specified in section 1448(a)(3)(C) of this title exists.

(3) FORM OF CONCURRENCE.—The concurrence of a spouse under paragraph (1) shall be made in such written form and shall contain such information as may be required under regulations prescribed by the Secretary of Defense.

(c) LIMITATION ON ELECTION WHEN FORMER SPOUSE COVERAGE IN EFFECT.—The limitation set forth in section 1450(f)(2) of this title applies to an election to discontinue participation in the Plan under subsection (a).

(d) WITHDRAWAL OF ELECTION TO DISCONTINUE.—Section 1448(b)(1)(D) of this title applies to an election under subsection (a).

(e) CONSEQUENCES OF DISCONTINUATION.—Section 1448(b)(1)(E) of this title applies to an election under subsection (a).

(f) NOTICE TO AFFECTED BENEFICIARIES.—The Secretary concerned shall notify any former spouse or other natural person previously designated under section 1448(b) of this title of an election to discontinue participation under subsection (a).

(g) EFFECTIVE DATE OF ELECTION.—An election under subsection (a) is effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

(h) INAPPLICABILITY OF IRREVOCABILITY PROVISIONS.—Paragraphs (4)(B) and (5)(C) of section 1448(a) of this title do not apply to prevent an election under subsection (a).

(Added P.L. 105–85, § 641(a)(1), Nov. 18, 1997, 111 Stat. 1797.)

§ 1449. Mental incompetency of member

(a) ELECTION BY SECRETARY CONCERNED ON BEHALF OF MENTALLY INCOMPETENT MEMBER.—If a person to whom section 1448 of this title applies is determined to be mentally incompetent by medical officers of the armed force concerned or of the Department of Veterans Affairs, or by a court of competent jurisdiction, an election described in subsection (a)(2) or (b) of section 1448 of this title may be made on behalf of that person by the Secretary concerned.

(b) REVOCATION OF ELECTION BY MEMBER.—

(1) AUTHORITY UPON SUBSEQUENT DETERMINATION OF MENTAL COMPETENCE.—If a person for whom the Secretary has made an election under subsection (a) is later determined to be mentally competent by an authority named in that subsection, that person may, within 180 days after that determination, revoke that election.

(2) DEDUCTIONS FROM RETIRED PAY NOT TO BE REFUNDED.—Any deduction made from retired pay by reason of such an election may not be refunded.

(Added P.L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 708; amended P.L. 95–397, § 207(a), Sept. 30, 1978, 92 Stat. 848; P.L. 101–189, §§ 1407(a)(3), 1621(a)(1), Nov. 29, 1989, 103 Stat. 1588, 1602; P.L. 104–201, § 634, Sept. 23, 1996, 110 Stat. 2560.)

§ 1450. Payment of annuity: beneficiaries

(a) IN GENERAL.—Effective as of the first day after the death of a person to whom section 1448 of this title applies (or on such other day as that person may provide under subsection (j)), a monthly annuity under section 1451 of this title shall be paid to the person's beneficiaries under the Plan, as follows:

(1) SURVIVING SPOUSE OR FORMER SPOUSE.—The eligible surviving spouse or the eligible former spouse.

(2) SURVIVING CHILDREN.—The surviving dependent children in equal shares, if the eligible surviving spouse or the eligible former spouse is dead, dies, or otherwise becomes ineligible under this section.

(3) DEPENDENT CHILDREN.—The dependent children in equal shares if the person to whom section 1448 of this title applies (with the concurrence of the person's spouse, if required under section 1448(a)(3) of this title) elected to provide an annuity for dependent children but not for the spouse or former spouse.

(4) NATURAL PERSON DESIGNATED UNDER "INSURABLE INTEREST" COVERAGE.—The natural person designated under section 1448(b)(1) of this title, unless the election to provide an annuity to the natural person has been changed as provided in subsection (f).

(b) TERMINATION OF ANNUITY FOR DEATH, REMARRIAGE BEFORE AGE 55, ETC.—

(1) GENERAL RULE.—An annuity payable to the beneficiary terminates effective as of the first day of the month in which eligibility is lost.

(2) TERMINATION OF SPOUSE ANNUITY UPON DEATH OR REMARRIAGE BEFORE AGE 55.—An annuity for a surviving spouse or former spouse shall be paid to the surviving spouse or former spouse while the surviving spouse or former spouse is living or, if the surviving spouse or former spouse remarries before reaching age 55, until the surviving spouse or former spouse remarries.

(3) EFFECT OF TERMINATION OF SUBSEQUENT MARRIAGE BEFORE AGE 55.—If the surviving spouse or former spouse remarries before reaching age 55 and that marriage is terminated by death, annulment, or divorce, payment of the annuity shall be resumed effective as of the first day of the month in which the marriage is so terminated. However, if the surviving spouse or former spouse is also entitled to an annuity under the Plan based upon the marriage so terminated, the surviving spouse or former spouse may not receive both annuities but must elect which to receive.

(c) OFFSET FOR AMOUNT OF DEPENDENCY AND INDEMNITY COMPENSATION.—

(1) REQUIRED OFFSET.—If, upon the death of a person to whom section 1448 of this title applies, the surviving spouse or former spouse of that person is also entitled to dependency and indemnity compensation under section 1311(a) of title 38, the surviving spouse or former spouse may be paid an annuity under this section, but only in the amount that the annuity

otherwise payable under this section would exceed that compensation.

(2) EFFECTIVE DATE OF OFFSET.—A reduction in an annuity under this section required by paragraph (1) shall be effective on the date of the commencement of the period of payment of such dependency and indemnity compensation under title 38.

(d) LIMITATION ON PAYMENT OF ANNUITIES WHEN COVERAGE UNDER CIVIL SERVICE RETIREMENT ELECTED.—If, upon the death of a person to whom section 1448 of this title applies, that person had in effect a waiver of that person's retired pay for the purposes of subchapter III of chapter 83 of title 5, an annuity under this section shall not be payable unless, in accordance with section 8339(j) of title 5, that person notified the Office of Personnel Management that he did not desire any spouse surviving him to receive an annuity under section 8341(b) of that title.

(e) REFUND OF AMOUNTS DEDUCTED FROM RETIRED PAY WHEN DIC OFFSET IS APPLICABLE.—

(1) FULL REFUND WHEN DIC GREATER THAN SBP ANNUITY.—If an annuity under this section is not payable because of subsection (c), any amount deducted from the retired pay of the deceased under section 1452 of this title shall be refunded to the surviving spouse or former spouse.

(2) PARTIAL REFUND WHEN SBP ANNUITY REDUCED BY DIC.—If, because of subsection (c), the annuity payable is less than the amount established under section 1451 of this title, the annuity payable shall be recalculated under that section. The amount of the reduction in the retired pay required to provide that recalculated annuity shall be computed under section 1452 of this title, and the difference between the amount deducted before the computation of that recalculated annuity and the amount that would have been deducted on the basis of that recalculated annuity shall be refunded to the surviving spouse or former spouse.

(f) CHANGE IN ELECTION OF INSURABLE INTEREST OR FORMER SPOUSE BENEFICIARY.—

(1) AUTHORIZED CHANGES.—

(A) ELECTION IN FAVOR OF SPOUSE OR CHILD.—A person who elects to provide an annuity to a person designated by him under section 1448(b) of this title may, subject to paragraph (2), change that election and provide an annuity to his spouse or dependent child.

(B) NOTICE.—The Secretary concerned shall notify the former spouse or other natural person previously designated under section 1448(b) of this title of any change of election under subparagraph (A).

(C) PROCEDURES, EFFECTIVE DATE, ETC.—Any such change of election is subject to the same rules with respect to execution, revocation, and effectiveness as are set forth in section 1448(a)(5) of this title (without regard to the eligibility of the person making the change of election to make such an election under that section). Notwithstanding the preceding sentence, a change of election under this subsection to provide an annuity to a spouse instead of a former spouse may (subject to paragraph (2)) be

made at any time after the person providing the annuity remarries without regard to the time limitation in section 1448(a)(5)(B) of this title.

(2) LIMITATION ON CHANGE IN BENEFICIARY WHEN FORMER SPOUSE COVERAGE IN EFFECT.—A person who, incident to a proceeding of divorce, dissolution, or annulment, is required by a court order to elect under section 1448(b) of this title to provide an annuity to a former spouse (or to both a former spouse and child), or who enters into a written agreement (whether voluntary or required by a court order) to make such an election, and who makes an election pursuant to such order or agreement, may not change that election under paragraph (1) unless, of the following requirements, whichever are applicable in a particular case are satisfied:

(A) In a case in which the election is required by a court order, or in which an agreement to make the election has been incorporated in or ratified or approved by a court order, the person—

(i) furnishes to the Secretary concerned a certified copy of a court order which is regular on its face and which modifies the provisions of all previous court orders relating to such election, or the agreement to make such election, so as to permit the person to change the election; and

(ii) certifies to the Secretary concerned that the court order is valid and in effect.

(B) In a case of a written agreement that has not been incorporated in or ratified or approved by a court order, the person—

(i) furnishes to the Secretary concerned a statement, in such form as the Secretary concerned may prescribe, signed by the former spouse and evidencing the former spouse's agreement to a change in the election under paragraph (1); and

(ii) certifies to the Secretary concerned that the statement is current and in effect.

(3) REQUIRED FORMER SPOUSE ELECTION TO BE DEEMED TO HAVE BEEN MADE.—

(A) DEEMED ELECTION UPON REQUEST BY FORMER SPOUSE.—If a person described in paragraph (2) or (3) of section 1448(b) of this title is required (as described in subparagraph (B)) to elect under section 1448(b) of this title to provide an annuity to a former spouse and such person then fails or refuses to make such an election, such person shall be deemed to have made such an election if the Secretary concerned receives the following:

(i) REQUEST FROM FORMER SPOUSE.—A written request, in such manner as the Secretary shall prescribe, from the former spouse concerned requesting that such an election be deemed to have been made.

(ii) COPY OF COURT ORDER OR OTHER OFFICIAL STATEMENT.—Either—

(I) a copy of the court order, regular on its face, which requires such election or incorporates,

ratifies, or approves the written agreement of such person; or

(II) a statement from the clerk of the court (or other appropriate official) that such agreement has been filed with the court in accordance with applicable State law.

(B) PERSONS REQUIRED TO MAKE ELECTION.—A person shall be considered for purposes of subparagraph (A) to be required to elect under section 1448(b) of this title to provide an annuity to a former spouse if—

(i) the person enters, incident to a proceeding of divorce, dissolution, or annulment, into a written agreement to make such an election and the agreement (I) has been incorporated in or ratified or approved by a court order, or (II) has been filed with the court of appropriate jurisdiction in accordance with appli-cable State law; or

(ii) the person is required by a court order to make such an election.

(C) TIME LIMIT FOR REQUEST BY FORMER SPOUSE.—An election may not be deemed to have been made under subparagraph (A) in the case of any person unless the Secretary concerned receives a request from the former spouse of the person within one year of the date of the court order or filing involved.

(D) EFFECTIVE DATE OF DEEMED ELECTION.—An election deemed to have been made under subparagraph (A) shall become effective on the day referred to in section 1448(b)(3)(E)(ii) of this title.

(4) FORMER SPOUSE COVERAGE MAY BE REQUIRED BY COURT ORDER.—A court order may require a person to elect (or to enter into an agreement to elect) under section 1448(b) of this title to provide an annuity to a former spouse (or to both a former spouse and child).

(g) LIMITATION ON CHANGING OR REVOKING ELECTIONS.—

(1) IN GENERAL.—An election under this section may not be changed or revoked.

(2) EXCEPTIONS.—Paragraph (1) does not apply to—

(A) a revocation of an election under section 1449(b) of this title; or

(B) a change in an election under subsection (f).

(h) TREATMENT OF ANNUITIES UNDER OTHER LAWS.—Except as provided in section 1451 of this title, an annuity under this section is in addition to any other payment to which a person is entitled under any other provision of law. Such annuity shall be considered as income under laws administered by the Secretary of Veterans Affairs.

(i) ANNUITIES EXEMPT FROM CERTAIN LEGAL PROCESS.—Except as provided in subsection (l)(3)(B), an annuity under this section is not assignable or subject to execution, levy, attachment, garnishment, or other legal process.

(j) EFFECTIVE DATE OF RESERVE-COMPONENT ANNUITIES.—

(1) PERSONS MAKING SECTION 1448(e) DESIGNATION.—A reserve-component annuity shall be effective in accordance with the designation made under section 1448(e) of this title by the person providing the annuity.

(2) PERSONS DYING BEFORE MAKING SECTION 1448(e) DESIGNATION.—An annuity payable under section 1448(f) of this title shall be effective on the day after the date of the death of the person upon whose service the right to the annuity is based.

(k) ADJUSTMENT OF SPOUSE OR FORMER SPOUSE ANNUITY UPON LOSS OF DEPENDENCY AND INDEMNITY COMPENSATION.—

(1) READJUSTMENT IF BENEFICIARY 55 YEARS OF AGE OR MORE.—If a surviving spouse or former spouse whose annuity has been adjusted under subsection (c) subsequently loses entitlement to dependency and indemnity compensation under section 1311(a) of title 38 because of the remarriage of the surviving spouse, or former spouse, and if at the time of such remarriage the surviving spouse or former spouse is 55 years of age or more, the amount of the annuity of the surviving spouse or former spouse shall be readjusted, effective on the effective date of such loss of dependency and indemnity compensation, to the amount of the annuity which would be in effect with respect to the surviving spouse or former spouse if the adjustment under subsection (c) had never been made.

(2) REPAYMENT OF AMOUNTS PREVIOUSLY REFUNDED.—

(A) GENERAL RULE.—A surviving spouse or former spouse whose annuity is readjusted under paragraph (1) shall repay any amount refunded under subsection (e) by reason of the adjustment under subsection (c).

(B) INTEREST REQUIRED IF REPAYMENT NOT A LUMP SUM.—If the repayment is not made in a lump sum, the surviving spouse or former spouse shall pay interest on the amount to be repaid. Such interest shall commence on the date on which the first such payment is due and shall be applied over the period during which any part of the repayment remains to be paid.

(C) MANNER OF REPAYMENT; RATE OF INTEREST.—The manner in which such repayment shall be made, and the rate of any such interest, shall be prescribed in regulations under section 1455 of this title.

(D) DEPOSIT OF AMOUNTS REPAID.—An amount repaid under this paragraph (including any such interest) received by the Secretary of Defense shall be deposited into the Department of Defense Military Retirement Fund. Any other amount repaid under this paragraph shall be deposited into the Treasury as miscellaneous receipts.

(l) PARTICIPANTS IN THE PLAN WHO ARE MISSING.—

(1) AUTHORITY TO PRESUME DEATH OF MISSING PARTICIPANT.—

(A) IN GENERAL.—Upon application of the beneficiary of a participant in the Plan who is missing, the Secretary concerned may determine for purposes of this subchapter that the participant is presumed dead.

(B) PARTICIPANT WHO IS MISSING.—A participant in the Plan is considered to be missing for purposes of this subsection if—

(i) the retired pay of the participant has been suspended on the basis that the participant is missing; or

(ii) in the case of a participant in the Plan who would be eligible for reserve-component retired pay but for the fact that he is under 60 years of age, his retired pay, if he were entitled to retired pay, would be suspended on the basis that he is missing.

(C) REQUIREMENTS APPLICABLE TO PRESUMPTION OF DEATH.—Any such determination shall be made in accordance with regulations prescribed under section 1455 of this title. The Secretary concerned may not make a determination for purposes of this subchapter that a participant who is missing is presumed dead unless the Secretary finds that—

(i) the participant has been missing for at least 30 days; and

(ii) the circumstances under which the participant is missing would lead a reasonably prudent person to conclude that the participant is dead.

(2) COMMENCEMENT OF ANNUITY.—Upon a determination under paragraph (1) with respect to a participant in the Plan, an annuity otherwise payable under this subchapter shall be paid as if the participant died on the date as of which the retired pay of the participant was suspended.

(3) EFFECT OF PERSON NOT BEING DEAD.—

(A) TERMINATION OF ANNUITY.—If, after a determination under paragraph (1), the Secretary concerned determines that the participant is alive—

(i) any annuity being paid under this subchapter by reason of this subsection shall be terminated; and

(ii) the total amount of any annuity payments made by reason of this subsection shall constitute a debt to the United States.

(B) COLLECTION FROM PARTICIPANT OF ANNUITY AMOUNTS ERRONEOUSLY PAID.—A debt under subparagraph (A)(ii) may be collected or offset—

(i) from any retired pay otherwise payable to the participant;

(ii) if the participant is entitled to compensation under chapter 11 of title 38, from that compensation; or

(iii) if the participant is entitled to any other payment from the United States, from that payment.

(C) COLLECTION FROM BENEFICIARY.—If the participant dies before the full recovery of the amount of annuity payments described in subparagraph (A)(ii) has been made by the United States, the remaining amount of such annuity

payments may be collected from the participant's beneficiary under the Plan if that beneficiary was the recipient of the annuity payments made by reason of this subsection.

(Added P.L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 708; amended P.L. 94–496, § 1(3), (4), Oct. 14, 1976, 90 Stat. 2375; P.L. 95–397, §§ 203, 207(b), (c), Sept. 30, 1978, 92 Stat. 845, 848; P.L. 97–22, § 11(a)(3), July 10, 1981, 95 Stat. 137; P.L. 97–252, § 1003(c), (d), Sept. 8, 1982, 96 Stat. 736; P.L. 98–94, § 941(a)(3), 941(c)(3), Sept. 24, 1983, 97 Stat. 653; P.L. 98–525, §§ 642(b), 644, Oct. 19, 1984, 98 Stat. 2546, 2548; P.L. 99–145, §§ 713(b), 717, 718, 719(4)–(6), (8)(A), 722, 723(a), (b)(1), 1303(a)(11), Nov. 8, 1985, 99 Stat. 671, 674, 675, 677, 739; P.L. 99–661, §§ 641(a), (b)(2), (b)(3), 643(a), 1343(a)(8)(C), Nov. 14, 1986, 100 Stat. 3885, 3886, 3992; P.L. 100–180, § 636(a), Dec. 4, 1987, 101 Stat. 1106; P.L. 100–224, § 5(b)(1), Dec. 30, 1987, 101 Stat. 1538; P.L. 101–189, §§ 1407(a)(2), (3), (4), 1621(a)(1), Nov. 29, 1989, 103 Stat. 1588, 1602; P.L. 103–337, § 1070(e)(3), Oct. 5, 1994, 108 Stat. 2859; P.L. 104–201, § 634, Sept. 23, 1996, 110 Stat. 2561; P.L. 105–85, § 642(a), Nov. 18, 1997, 111 Stat. 1799; P.L. 105–261, § 643(b), Oct. 17, 1998, 112 Stat. 2048; P.L. 106–398, § 1[655(c)(4)], Oct. 30, 2000, 114 Stat. 1654, 1654A–166.)

§ 1451. Amount of annuity

(a) COMPUTATION OF ANNUITY FOR A SPOUSE, FORMER SPOUSE, OR CHILD.—

(1) STANDARD ANNUITY.—In the case of a standard annuity provided to a beneficiary under section 1450(a) of this title (other than under section 1450(a)(4)), the monthly annuity payable to the beneficiary shall be determined as follows:

(A) BENEFICIARY UNDER 62 YEARS OF AGE.—If the beneficiary is under 62 years of age or is a dependent child when becoming entitled to the annuity, the monthly annuity shall be the amount equal to 55 percent of the base amount.

(B) BENEFICIARY 62 YEARS OF AGE OR OLDER.—

(i) GENERAL RULE.—If the beneficiary (other than a dependent child) is 62 years of age or older when becoming entitled to the annuity, the monthly annuity shall be the amount equal to 35 percent of the base amount.

(ii) RULE IF BENEFICIARY ELIGIBLE FOR SOCIAL SECURITY OFFSET COMPUTATION.—If the beneficiary is eligible to have the annuity computed under subsection (e) and if, at the time the beneficiary becomes entitled to the annuity, computation of the annuity under that subsection is more favorable to the beneficiary than computation under clause (i), the annuity shall be computed under that subsection rather than under clause (i).

(2) RESERVE-COMPONENT ANNUITY.—In the case of a reserve-component annuity provided to a beneficiary under section 1450(a) of this title (other than under section 1450(a)(4)), the monthly annuity payable to the beneficiary shall be determined as follows:

(A) BENEFICIARY UNDER 62 YEARS OF AGE.—If the beneficiary is under 62 years of age or is a dependent child when becoming entitled to the annuity, the monthly annuity shall be the amount equal to a percentage of the base amount that—

(i) is less than 55 percent; and

(ii) is determined under subsection (f).

(B) BENEFICIARY 62 YEARS OF AGE OR OLDER.—

(i) GENERAL RULE.—If the beneficiary (other than a dependent child) is 62 years of age or older when becoming entitled to the annuity, the monthly annuity shall be the amount equal to a percentage of the base amount that—

(I) is less than 35 percent; and

(II) is determined under subsection (f).

(ii) RULE IF BENEFICIARY ELIGIBLE FOR SOCIAL SECURITY OFFSET COMPUTATION.—If the beneficiary is eligible to have the annuity computed under subsection (e) and if, at the time the beneficiary becomes entitled to the annuity, computation of the annuity under that subsection is more favorable to the beneficiary than computation under clause (i), the annuity shall be computed under that subsection rather than under clause (i).

(b) INSURABLE INTEREST BENEFICIARY.—

(1) STANDARD ANNUITY.—In the case of a standard annuity provided to a beneficiary under section 1450(a)(4) of this title, the monthly annuity payable to the beneficiary shall be the amount equal to 55 percent of the retired pay of the person who elected to provide the annuity after the reduction in that pay in accordance with section 1452(c) of this title.

(2) RESERVE-COMPONENT ANNUITY.—In the case of a reserve-component annuity provided to a beneficiary under section 1450(a)(4) of this title, the monthly annuity payable to the beneficiary shall be the amount equal to a percentage of the retired pay of the person who elected to provide the annuity after the reduction in such pay in accordance with section 1452(c) of this title that—

(A) is less than 55 percent; and

(B) is determined under subsection (f).

(3) COMPUTATION OF RESERVE-COMPONENT ANNUITY WHEN PARTICIPANT DIES BEFORE AGE 60.—For the purposes of paragraph (2), a person—

(A) who provides an annuity that is determined in accordance with that paragraph;

(B) who dies before becoming 60 years of age; and

(C) who at the time of death is otherwise entitled to retired pay,

shall be considered to have been entitled to retired pay at the time of death. The retired pay of such person for the purposes of such paragraph shall be computed on the basis of the rates of basic pay in effect on the date on which the annuity provided by such person is to become effective in accordance with the designation of such person under section 1448(e) of this title.

(c) ANNUITIES FOR SURVIVORS OF CERTAIN PERSONS DYING DURING A PERIOD OF SPECIAL ELIGIBILITY FOR SBP.—

(1) IN GENERAL.—In the case of an annuity provided under section 1448(d) or 1448(f) of this title, the amount of the annuity shall be determined as follows:

(A) BENEFICIARY UNDER 62 YEARS OF AGE.—If the person receiving the annuity is under 62 years of age or is a

dependent child when the member or former member dies, the monthly annuity shall be the amount equal to 55 percent of the retired pay to which the member or former member would have been entitled if the member or former member had been entitled to that pay based upon his years of active service when he died.

(B) BENEFICIARY 62 YEARS OF AGE OR OLDER.—

(i) GENERAL RULE.—If the person receiving the annuity (other than a dependent child) is 62 years of age or older when the member or former member dies, the monthly annuity shall be the amount equal to 35 percent of the retired pay to which the member or former member would have been entitled if the member or former member had been entitled to that pay based upon his years of active service when he died.

(ii) RULE IF BENEFICIARY ELIGIBLE FOR SOCIAL SECURITY OFFSET COMPUTATION.—If the beneficiary is eligible to have the annuity computed under subsection (e) and if, at the time the beneficiary becomes entitled to the annuity, computation of the annuity under that subsection is more favorable to the beneficiary than computation under clause (i), the annuity shall be computed under that subsection rather than under clause (i).

(2) DIC OFFSET.—An annuity computed under paragraph (1) that is paid to a surviving spouse shall be reduced by the amount of dependency and indemnity compensation to which the surviving spouse is entitled under section 1311(a) of title 38. Any such reduction shall be effective on the date of the commencement of the period of payment of such compensation under title 38.

(3) SERVICEMEMBERS NOT YET GRANTED RETIRED PAY.—In the case of an annuity provided by reason of the service of a member described in section 1448(d)(1)(B) or 1448(d)(1)(C) of this title who first became a member of a uniformed service before September 8, 1980, the retired pay to which the member would have been entitled when he died shall be determined for purposes of paragraph (1) based upon the rate of basic pay in effect at the time of death for the grade in which the member was serving at the time of death, unless (as determined by the Secretary concerned) the member would have been entitled to be retired in a higher grade.

(4) RATE OF PAY TO BE USED IN COMPUTING ANNUITY.—In the case of an annuity paid under section 1448(f) of this title by reason of the service of a person who first became a member of a uniformed service before September 8, 1980, the retired pay of the person providing the annuity shall for the purposes of paragraph (1) be computed on the basis of the rates of basic pay in effect on the effective date of the annuity.

(d) REDUCTION OF ANNUITIES AT AGE 62.—

(1) REDUCTION REQUIRED.—The annuity of a person whose annuity is computed under subparagraph (A) of subsection (a)(1), (a)(2), or (c)(1) shall be reduced on the first day of the

month after the month in which the person becomes 62 years of age.

(2) AMOUNT OF ANNUITY AS REDUCED.—

(A) 35 PERCENT ANNUITY.—Except as provided in subparagraph (B), the reduced amount of the annuity shall be the amount of the annuity that the person would be receiving on that date if the annuity had initially been computed under subparagraph (B) of that subsection.

(B) SAVINGS PROVISION FOR BENEFICIARIES ELIGIBLE FOR SOCIAL SECURITY OFFSET COMPUTATION.—In the case of a person eligible to have an annuity computed under subsection (e) and for whom, at the time the person becomes 62 years of age, the annuity computed with a reduction under subsection (e)(3) is more favorable than the annuity with a reduction described in subparagraph (A), the reduction in the annuity shall be computed in the same manner as a reduction under subsection (e)(3).

(e) SAVINGS PROVISION FOR CERTAIN BENEFICIARIES.—

(1) PERSONS COVERED.—The following beneficiaries under the Plan are eligible to have an annuity under the Plan computed under this subsection:

(A) A beneficiary receiving an annuity under the Plan on October 1, 1985, as the surviving spouse or former spouse of the person providing the annuity.

(B) A spouse or former spouse beneficiary of a person who on October 1, 1985—

(i) was a participant in the Plan;

(ii) was entitled to retired pay or was qualified for that pay except that he had not applied for and been granted that pay; or

(iii) would have been eligible for reserve-component retired pay but for the fact that he was under 60 years of age.

(2) AMOUNT OF ANNUITY.—Subject to paragraph (3), an annuity computed under this subsection is determined as follows:

(A) STANDARD ANNUITY.—In the case of the beneficiary of a standard annuity, the annuity shall be the amount equal to 55 percent of the base amount.

(B) RESERVE-COMPONENT ANNUITY.—In the case of the beneficiary of a reserve-component annuity, the annuity shall be the percentage of the base amount that—

(i) is less than 55 percent; and

(ii) is determined under subsection (f).

(C) BENEFICIARIES OF PERSONS DYING DURING A PERIOD OF SPECIAL ELIGIBILITY FOR SBP.—In the case of the beneficiary of an annuity under section 1448(d) or 1448(f) of this title, the annuity shall be the amount equal to 55 percent of the retired pay of the person providing the annuity (as that pay is determined under subsection (c)).

(3) SOCIAL SECURITY OFFSET.—An annuity computed under this subsection shall be reduced by the lesser of the following:

(A) SOCIAL SECURITY COMPUTATION.—The amount of the survivor benefit, if any, to which the surviving spouse (or the former spouse, in the case of a former spouse bene-

ficiary who became a former spouse under a divorce that became final after November 29, 1989) would be entitled under title II of the Social Security Act (42 U.S.C. 401 et seq.) based solely upon service by the person concerned as described in section 210(l)(1) of such Act (42 U.S.C. 410(l)(1)) and calculated assuming that the person concerned lives to age 65.

(B) MAXIMUM AMOUNT OF REDUCTION.—40 percent of the amount of the monthly annuity as determined under paragraph (2).

(4) SPECIAL RULES FOR SOCIAL SECURITY OFFSET COMPUTATION.—

(A) TREATMENT OF DEDUCTIONS MADE ON ACCOUNT OF WORK.—For the purpose of paragraph (3), a surviving spouse (or a former spouse, in the case of a person who becomes a former spouse under a divorce that becomes final after November 29, 1989) shall not be considered as entitled to a benefit under title II of the Social Security Act (42 U.S.C. 401 et seq.) to the extent that such benefit has been offset by deductions under section 203 of such Act (42 U.S.C. 403) on account of work.

(B) TREATMENT OF CERTAIN PERIODS FOR WHICH SOCIAL SECURITY REFUNDS ARE MADE.—In the computation of any reduction made under paragraph (3), there shall be excluded any period of service described in section 210(l)(1) of the Social Security Act (42 U.S.C. 410(l)(1))—

(i) which was performed after December 1, 1980; and

(ii) which involved periods of service of less than 30 continuous days for which the person concerned is entitled to receive a refund under section 6413(c) of the Internal Revenue Code of 1986 of the social security tax which the person had paid.

(f) DETERMINATION OF PERCENTAGES APPLICABLE TO COMPUTATION OF RESERVE-COMPONENT ANNUITIES.—The percentage to be applied in determining the amount of an annuity computed under subsection (a)(2), (b)(2), or (e)(2)(B) shall be determined under regulations prescribed by the Secretary of Defense. Such regulations shall be prescribed taking into consideration the following:

(1) The age of the person electing to provide the annuity at the time of such election.

(2) The difference in age between such person and the beneficiary of the annuity.

(3) Whether such person provided for the annuity to become effective (in the event he died before becoming 60 years of age) on the day after his death or on the 60th anniversary of his birth.

(4) Appropriate group annuity tables.

(5) Such other factors as the Secretary considers relevant.

(g) ADJUSTMENTS TO ANNUITIES.—

(1) PERIODIC ADJUSTMENTS FOR COST-OF-LIVING.—

(A) INCREASES IN ANNUITIES WHEN RETIRED PAY INCREASED.—Whenever retired pay is increased under section 1401a of this title (or any other provision of law), each

annuity that is payable under the Plan shall be increased at the same time.

(B) PERCENTAGE OF INCREASE.—The increase shall, in the case of any annuity, be by the same percent as the percent by which the retired pay of the person providing the annuity would have been increased at such time if the person were alive (and otherwise entitled to such pay).

(C) CERTAIN REDUCTIONS TO BE DISREGARDED.—The amount of the increase shall be based on the monthly annuity payable before any reduction under section 1450(c) of this title or under subsection (c)(2).

(2) ROUNDING DOWN.—The monthly amount of an annuity payable under this subchapter, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(h) ADJUSTMENTS TO BASE AMOUNT.—

(1) PERIODIC ADJUSTMENTS FOR COST-OF-LIVING.—

(A) INCREASES IN BASE AMOUNT WHEN RETIRED PAY INCREASED.—Whenever retired pay is increased under section 1401a of this title (or any other provision of law), the base amount applicable to each participant in the Plan shall be increased at the same time.

(B) PERCENTAGE OF INCREASE.—The increase shall be by the same percent as the percent by which the retired pay of the participant is so increased.

(2) RECOMPUTATION AT AGE 62.—When the retired pay of a person who first became a member of a uniformed service on or after August 1, 1986, and who is a participant in the Plan is recomputed under section 1410 of this title upon the person's becoming 62 years of age, the base amount applicable to that person shall be recomputed (effective on the effective date of the recomputation of such retired pay under section 1410 of this title) so as to be the amount equal to the amount of the base amount that would be in effect on that date if increases in such base amount under paragraph (1) had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section).

(3) DISREGARDING OF RETIRED PAY REDUCTIONS FOR RETIREMENT OF CERTAIN MEMBERS BEFORE 30 YEARS OF SERVICE.—Computation of a member's retired pay for purposes of this section shall be made without regard to any reduction under section 1409(b)(2) of this title.

(i) RECOMPUTATION OF ANNUITY FOR CERTAIN BENEFICIARIES.—In the case of an annuity under the Plan which is computed on the basis of the retired pay of a person who would have been entitled to have that retired pay recomputed under section 1410 of this title upon attaining 62 years of age, but who dies before attaining that age, the annuity shall be recomputed, effective on the first day of the first month beginning after the date on which the member or former member would have attained 62 years of age, so as to be the amount equal to the amount of the annuity that would be in effect on that date if increases under subsection (h)(1) in the base amount applicable to that annuity to the time of the death of the member or former member, and increases in such annuity under

subsection (g)(1), had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section).

(Added P.L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 709; amended P.L. 94–496, § 1(4), Oct. 14, 1976, 90 Stat. 2375; P.L. 95–397, § 204, Sept. 30, 1978, 92 Stat. 846; P.L. 96–402, § 3, Oct. 9, 1980, 94 Stat. 1705; P.L. 97–22, § 11(a)(4), July 10, 1981, 95 Stat. 137; P.L. 98–94, § 922, Sept. 24, 1983, 97 Stat. 642; P.L. 98–525, § 641(a), Oct. 19, 1984, 98 Stat. 2545; P.L. 99–145, § 711(a), Nov. 8, 1985, 99 Stat. 666; P.L. 99–348, § 301, July 1, 1986, 100 Stat. 702; P.L. 99–661, §§ 642(b), 1343(a)(8)(D), Nov. 14, 1986, 100 Stat. 3886, 3992; P.L. 100–26, § 7(h)(1), April 21, 1987, 101 Stat 282; P.L. 100–224, § 3(a), (c), Dec. 30, 1987, 101 Stat. 1537; P.L. 100–456, § 652, Sept. 29, 1988, 102 Stat. 1991; P.L. 101–189, §§ 1403(a), 1407(a)(5)–(8), (b)(1), Nov. 29, 1989, 103 Stat. 1579, 1588; P.L. 103–337, § 1070(e)(4), Oct. 5, 1994, 108 Stat. 2859; P.L. 104–201, § 634, Sept. 23, 1996, 110 Stat. 2566; P.L. 105–85, § 1073(a)(28), Nov. 18, 1997, 111 Stat. 1901; P.L. 106–65, § 643(a)(1), Oct. 5, 1999, 113 Stat. 663.)

§ 1452. Reduction in retired pay

(a) SPOUSE AND FORMER SPOUSE ANNUITIES.—

(1) REQUIRED REDUCTION IN RETIRED PAY.—Except as provided in subsection (b), the retired pay of a participant in the Plan who is providing spouse coverage (as described in paragraph (5)) shall be reduced as follows:

(A) STANDARD ANNUITY.—If the annuity coverage being provided is a standard annuity, the reduction shall be as follows:

(i) DISABILITY AND NONREGULAR SERVICE RETIREES.—In the case of a person who is entitled to retired pay under chapter 61 or chapter 1223 of this title, the reduction shall be in whichever of the alternative reduction amounts is more favorable to that person.

(ii) MEMBERS AS OF ENACTMENT OF FLAT-RATE REDUCTION.—In the case of a person who first became a member of a uniformed service before March 1, 1990, the reduction shall be in whichever of the alternative reduction amounts is more favorable to that person.

(iii) NEW ENTRANTS AFTER ENACTMENT OF FLAT-RATE REDUCTION.—In the case of a person who first becomes a member of a uniformed service on or after March 1, 1990, and who is entitled to retired pay under a provision of law other than chapter 61 or chapter 1223 of this title, the reduction shall be in an amount equal to 6½ percent of the base amount.

(iv) ALTERNATIVE REDUCTION AMOUNTS.—For purposes of clauses (i) and (ii), the alternative reduction amounts are the following:

(I) FLAT-RATE REDUCTION.—An amount equal to 6½ percent of the base amount.

(II) AMOUNT UNDER PRE-FLAT-RATE REDUCTION.—An amount equal to 2½ percent of the first $337 (as adjusted after November 1, 1989, under paragraph (4)) of the base amount plus 10 percent of the remainder of the base amount.

(B) RESERVE-COMPONENT ANNUITY.—If the annuity coverage being provided is a reserve-component annuity, the reduction shall be in whichever of the following amounts is more favorable to that person:

(i) FLAT-RATE REDUCTION.—An amount equal to 6½ percent of the base amount plus an amount determined in accordance with regulations prescribed by the Secretary of Defense as a premium for the additional coverage provided through reserve-component annuity coverage under the Plan.

(ii) AMOUNT UNDER PRE-FLAT-RATE REDUCTION.—An amount equal to 2½ percent of the first $337 (as adjusted after November 1, 1989, under paragraph (4)) of the base amount plus 10 percent of the remainder of the base amount plus an amount determined in accordance with regulations prescribed by the Secretary of Defense as a premium for the additional coverage provided through reserve-component annuity coverage under the Plan.

(2) ADDITIONAL REDUCTION FOR CHILD COVERAGE.—If there is a dependent child as well as a spouse or former spouse, the amount prescribed under paragraph (1) shall be increased by an amount prescribed under regulations of the Secretary of Defense.

(3) NO REDUCTION WHEN NO BENEFICIARY.—The reduction in retired pay prescribed by paragraph (1) shall not be applicable during any month in which there is no eligible spouse or former spouse beneficiary.

(4) PERIODIC ADJUSTMENTS.—

(A) ADJUSTMENTS FOR INCREASES IN RATES OF BASIC PAY.—Whenever there is an increase in the rates of basic pay of members of the uniformed services effective on or after October 1, 1985, the amounts under paragraph (1) with respect to which the percentage factor of 2½ is applied shall be increased by the overall percentage of such increase in the rates of basic pay. The increase under the preceding sentence shall apply only with respect to persons whose retired pay is computed based on the rates of basic pay in effect on or after the date of such increase in rates of basic pay.

(B) ADJUSTMENTS FOR RETIRED PAY COLAS.—In addition to the increase under subparagraph (A), the amounts under paragraph (1) with respect to which the percentage factor of 2½ is applied shall be further increased at the same time and by the same percentage as an increase in retired pay under section 1401a of this title effective on or after October 1, 1985. Such increase under the preceding sentence shall apply only with respect to a person who initially participates in the Plan on a date which is after both the effective date of such increase under section 1401a and the effective date of the rates of basic pay upon which that person's retired pay is computed.

(5) SPOUSE COVERAGE DESCRIBED.—For the purposes of paragraph (1), a participant in the Plan who is providing spouse coverage is a participant who—

(A) has (i) a spouse or former spouse, or (ii) a spouse or former spouse and a dependent child; and

(B) has not elected to provide an annuity to a person designated by him under section 1448(b)(1) of this title or, having made such an election, has changed his election in favor of his spouse under section 1450(f) of this title.

(b) CHILD-ONLY ANNUITIES.—

(1) REQUIRED REDUCTION IN RETIRED PAY.—The retired pay of a participant in the Plan who is providing child-only coverage (as described in paragraph (4)) shall be reduced by an amount prescribed under regulations by the Secretary of Defense.

(2) NO REDUCTION WHEN NO CHILD.—There shall be no reduction in retired pay under paragraph (1) for any month during which the participant has no eligible dependent child.

(3) SPECIAL RULE FOR CERTAIN RCSBP PARTICIPANTS.—In the case of a participant in the Plan who is participating in the Plan under an election under section 1448(a)(2)(B) of this title and who provided child-only coverage during a period before the participant becomes entitled to receive retired pay, the retired pay of the participant shall be reduced by an amount prescribed under regulations by the Secretary of Defense to reflect the coverage provided under the Plan during the period before the participant became entitled to receive retired pay. A reduction under this paragraph is in addition to any reduction under paragraph (1) and is made without regard to whether there is an eligible dependent child during a month for which the reduction is made.

(4) CHILD-ONLY COVERAGE DEFINED.—For the purposes of this subsection, a participant in the Plan who is providing child-only coverage is a participant who has a dependent child and who—

(A) does not have an eligible spouse or former spouse; or

(B) has a spouse or former spouse but has elected to provide an annuity for dependent children only.

(c) REDUCTION FOR INSURABLE INTEREST COVERAGE.—

(1) REQUIRED REDUCTION IN RETIRED PAY.—The retired pay of a person who has elected to provide an annuity to a person designated by him under section 1450(a)(4) of this title shall be reduced as follows:

(A) STANDARD ANNUITY.—In the case of a person providing a standard annuity, the reduction shall be by 10 percent plus 5 percent for each full five years the individual designated is younger than that person.

(B) RESERVE COMPONENT ANNUITY.—In the case of a person providing a reserve-component annuity, the reduction shall be by an amount prescribed under regulations of the Secretary of Defense.

(2) LIMITATION ON TOTAL REDUCTION.—The total reduction under paragraph (1) may not exceed 40 percent.

(3) DURATION OF REDUCTION.—The reduction in retired pay prescribed by this subsection shall continue during the lifetime of the person designated under section 1450(a)(4) of this title or until the person receiving retired pay changes his election under section 1450(f) of this title.

(4) RULE FOR COMPUTATION.—Computation of a member's retired pay for purposes of this subsection shall be made without regard to any reduction under section 1409(b)(2) of this title.

(d) DEPOSITS TO COVER PERIODS WHEN RETIRED PAY NOT PAID.—

(1) REQUIRED DEPOSITS.—If a person who has elected to participate in the Plan has been awarded retired pay and is not entitled to that pay for any period, that person must deposit in the Treasury the amount that would otherwise have been deducted from his pay for that period.

(2) DEPOSITS NOT REQUIRED WHEN PARTICIPANT ON ACTIVE DUTY.—Paragraph (1) does not apply to a person with respect to any period when that person is on active duty under a call or order to active duty for a period of more than 30 days.

(e) DEPOSITS NOT REQUIRED FOR CERTAIN PARTICIPANTS IN CSRS.—When a person who has elected to participate in the Plan waives that person's retired pay for the purposes of subchapter III of chapter 83 of title 5, that person shall not be required to make the deposit otherwise required by subsection (d) as long as that waiver is in effect unless, in accordance with section 8339(j) of title 5, that person has notified the Office of Personnel Management that he does not desire a spouse surviving him to receive an annuity under section 8341(b) of title 5.

(f) REFUNDS OF DEDUCTIONS NOT ALLOWED.—

(1) GENERAL RULE.—A person is not entitled to refund of any amount deducted from retired pay under this section.

(2) EXCEPTIONS.—Paragraph (1) does not apply—

(A) in the case of a refund authorized by section 1450(e) of this title; or

(B) in case of a deduction made through administrative error.

(g) DISCONTINUATION OF PARTICIPATION BY PARTICIPANTS WHOSE SURVIVING SPOUSES WILL BE ENTITLED TO DIC.—

(1) DISCONTINUATION.—

(A) CONDITIONS.—Notwithstanding any other provision of this subchapter but subject to paragraphs (2) and (3), a person who has elected to participate in the Plan and who is suffering from a service-connected disability rated by the Secretary of Veterans Affairs as totally disabling and has suffered from such disability while so rated for a continuous period of 10 or more years (or, if so rated for a lesser period, has suffered from such disability while so rated for a continuous period of not less than 5 years from the date of such person's last discharge or release from active duty) may discontinue participation in the Plan by submitting to the Secretary concerned a request to discontinue participation in the Plan.

(B) EFFECTIVE DATE.—Participation in the Plan of a person who submits a request under subparagraph (A) shall be discontinued effective on the first day of the first month following the month in which the request under subparagraph (A) is received by the Secretary concerned. Effective on such date, the Secretary concerned shall dis-

continue the reduction being made in such person's retired pay on account of participation in the Plan or, in the case of a person who has been required to make deposits in the Treasury on account of participation in the Plan, such person may discontinue making such deposits effective on such date.

(C) FORM FOR REQUEST FOR DISCONTINUATION.—Any request under this paragraph to discontinue participation in the Plan shall be in such form and shall contain such information as the Secretary concerned may require by regulation.

(2) CONSENT OF BENEFICIARIES REQUIRED.—A person described in paragraph (1) may not discontinue participation in the Plan under such paragraph without the written consent of the beneficiary or beneficiaries of such person under the Plan.

(3) INFORMATION ON PLAN TO BE PROVIDED BY SECRETARY CONCERNED.—

(A) INFORMATION TO BE PROVIDED PROMPTLY TO PARTICIPANT.—The Secretary concerned shall furnish promptly to each person who files a request under paragraph (1) to discontinue participation in the Plan a written statement of the advantages of participating in the Plan and the possible disadvantages of discontinuing participation.

(B) RIGHT TO WITHDRAW DISCONTINUATION REQUEST.—A person may withdraw a request made under paragraph (1) if it is withdrawn within 30 days after having been submitted to the Secretary concerned.

(4) REFUND OF DEDUCTIONS FROM RETIRED PAY.—Upon the death of a person described in paragraph (1) who discontinued participation in the Plan in accordance with this subsection, any amount deducted from the retired pay of that person under this section shall be refunded to the person's surviving spouse.

(5) RESUMPTION OF PARTICIPATION IN PLAN.—

(A) CONDITIONS FOR RESUMPTION.—A person described in paragraph (1) who discontinued participation in the Plan may elect to participate again in the Plan if—

(i) after having discontinued participation in the Plan the Secretary of Veterans Affairs reduces that person's service-connected disability rating to a rating of less than total; and

(ii) that person applies to the Secretary concerned, within such period of time after the reduction in such person's service-connected disability rating has been made as the Secretary concerned may prescribe, to again participate in the Plan and includes in such application such information as the Secretary concerned may require.

(B) EFFECTIVE DATE OF RESUMED COVERAGE.—Such person's participation in the Plan under this paragraph is effective beginning on the first day of the month after the month in which the Secretary concerned receives the application for resumption of participation in the Plan.

(C) RESUMPTION OF CONTRIBUTIONS.—When a person elects to participate in the Plan under this paragraph, the Secretary concerned shall begin making reductions in that person's retired pay, or require such person to make deposits in the Treasury under subsection (d), as appropriate, effective on the effective date of such participation under subparagraph (B).

(h) INCREASES IN REDUCTION WITH INCREASES IN RETIRED PAY.—

(1) GENERAL RULE.—Whenever retired pay is increased under section 1401a of this title (or any other provision of law), the amount of the reduction to be made under subsection (a) or (b) in the retired pay of any person shall be increased at the same time and by the same percentage as such retired pay is so increased.

(2) COORDINATION WHEN PAYMENT OF INCREASE IN RETIRED PAY IS DELAYED BY LAW.—

(A) IN GENERAL.—Notwithstanding paragraph (1), when the initial payment of an increase in retired pay under section 1401a of this title (or any other provision of law) to a person is for a month that begins later than the effective date of that increase by reason of the application of subsection (b)(2)(B) of such section (or section 631(b) of Public Law 104–106 (110 Stat. 364)), then the amount of the reduction in the person's retired pay shall be effective on the date of that initial payment of the increase in retired pay rather than the effective date of the increase in retired pay.

(B) DELAY NOT TO AFFECT COMPUTATION OF ANNUITY.—Subparagraph (A) may not be construed as delaying, for purposes of determining the amount of a monthly annuity under section 1451 of this title, the effective date of an increase in a base amount under subsection (h) of such section from the effective date of an increase in retired pay under section 1401a of this title to the date on which the initial payment of that increase in retired pay is made in accordance with subsection (b)(2)(B) of such section.

(i) RECOMPUTATION OF REDUCTION UPON RECOMPUTATION OF RETIRED PAY.—Whenever the retired pay of a person who first became a member of a uniformed service on or after August 1, 1986, and who is a participant in the Plan is recomputed under section 1410 of this title upon the person's becoming 62 years of age, the amount of the reduction in such retired pay under this section shall be recomputed (effective on the effective date of the recomputation of such retired pay under section 1410 of this title) so as to be the amount equal to the amount of such reduction that would be in effect on that date if increases in such retired pay under section 1401a(b) of this title, and increases in reductions in such retired pay under subsection (h), had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section).

(j) COVERAGE PAID UP AT 30 YEARS AND AGE 70.—Effective October 1, 2008, no reduction may be made under this section in the

retired pay of a participant in the Plan for any month after the later of—

(1) the 360th month for which the participant's retired pay is reduced under this section; and

(2) the month during which the participant attains 70 years of age.

(Added P.L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 710; amended P.L. 94–496, § 1(4), (5), Oct. 14, 1976, 90 Stat. 2375; P.L. 95–397, § 205, Sept. 30, 1978, 92 Stat. 847; P.L. 96–402, § 4, Oct. 9, 1980, 94 Stat. 1706; P.L. 97–22, § 11(a)(3), (5), July 10, 1981, 95 Stat. 137; P.L. 99–145, §§ 714(a), 719(7), (8), 723(b)(2), Nov. 8, 1985, 99 Stat. 672, 675, 677; P.L. 99–348, § 301(a)(3), July 1, 1986, 100 Stat. 702; P.L. 99–661, § 1343(a)(8)(E), Nov. 14, 1986, 100 Stat. 3992; P.L. 100–224, § 2(b), Dec. 30, 1987, 101 Stat. 1537; P.L. 101–189, §§ 1402(a)–(c), 1407(a)(9), 1621(a)(1), Nov. 29, 1989, 103 Stat. 1577, 1589, 1602; P.L. 103–337, § 637(a), Oct. 5, 1994, 108 Stat. 2790; P.L. 104–201, §§ 634, 635, Sept. 23, 1996, 110 Stat. 2572, 2579; P.L. 105–85, § 1073(a)(29), Nov. 18, 1997, 111 Stat. 1901; P.L. 105–261, § 641, Oct. 17, 1998, 112 Stat. 2045; P.L. 106–65, § 643(a)(2), Oct. 5, 1999, 113 Stat. 663.)

§ 1453. Recovery of amounts erroneously paid

(a) RECOVERY.—In addition to any other method of recovery provided by law, the Secretary concerned may authorize the recovery of any amount erroneously paid to a person under this subchapter by deduction from later payments to that person.

(b) AUTHORITY TO WAIVE RECOVERY.—Recovery of an amount erroneously paid to a person under this subchapter is not required if, in the judgment of the Secretary concerned—

(1) there has been no fault by the person to whom the amount was erroneously paid; and

(2) recovery of such amount would be contrary to the purposes of this subchapter or against equity and good conscience.

(Added P.L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 710; amended P.L. 104–201, § 634, Sept. 23, 1996, 110 Stat. 2577; P.L. 104–316, § 105(a), Oct. 19, 1996, 110 Stat. 3830.)

§ 1454. Correction of administrative errors

(a) AUTHORITY.—The Secretary concerned may, under regulations prescribed under section 1455 of this title, correct or revoke any election under this subchapter when the Secretary considers it necessary to correct an administrative error.

(b) FINALITY.—Except when procured by fraud, a correction or revocation under this section is final and conclusive on all officers of the United States.

(Added P.L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 711; amended P.L. 101–189, § 1407(a)(10)(A), Nov. 29, 1989, 103 Stat. 1589; P.L. 104–201, § 634, Sept. 23, 1996, 110 Stat. 2577.)

§ 1455. Regulations

(a) IN GENERAL.—The President shall prescribe regulations to carry out this subchapter. Those regulations shall, so far as practicable, be uniform for the uniformed services.

(b) NOTICE OF ELECTIONS.—Regulations prescribed under this section shall provide that before the date on which a member becomes entitled to retired pay—

(1) if the member is married, the member and the member's spouse shall be informed of the elections available under section 1448(a) of this title and the effects of such elections; and

(2) if the notification referred to in section 1448(a)(3)(E) of this title is required, any former spouse of the member shall

be informed of the elections available and the effects of such elections.

(c) PROCEDURE FOR DEPOSITING CERTAIN RECEIPTS.—Regulations prescribed under this section shall establish procedures for depositing the amounts referred to in sections 1448(g), 1450(k)(2), and 1452(d) of this title.

(d) PAYMENTS TO GUARDIANS AND FIDUCIARIES.—

(1) IN GENERAL.—Regulations prescribed under this section shall provide procedures for the payment of an annuity under this subchapter in the case of—

(A) a person for whom a guardian or other fiduciary has been appointed; and

(B) a minor, mentally incompetent, or otherwise legally disabled person for whom a guardian or other fiduciary has not been appointed.

(2) AUTHORIZED PROCEDURES.—The regulations under paragraph (1) may include provisions for the following:

(A) In the case of an annuitant referred to in paragraph (1)(A), payment of the annuity to the appointed guardian or other fiduciary.

(B) In the case of an annuitant referred to in paragraph (1)(B), payment of the annuity to any person who, in the judgment of the Secretary concerned, is responsible for the care of the annuitant.

(C) Subject to subparagraphs (D) and (E), a requirement for the payee of an annuity to spend or invest the amounts paid on behalf of the annuitant solely for benefit of the annuitant.

(D) Authority for the Secretary concerned to permit the payee to withhold from the annuity payment such amount, not in excess of 4 percent of the annuity, as the Secretary concerned considers a reasonable fee for the fiduciary services of the payee when a court appointment order provides for payment of such a fee to the payee for such services or the Secretary concerned determines that payment of a fee to such payee is necessary in order to obtain the fiduciary services of the payee.

(E) Authority for the Secretary concerned to require the payee to provide a surety bond in an amount sufficient to protect the interests of the annuitant and to pay for such bond out of the annuity.

(F) A requirement for the payee of an annuity to maintain and, upon request, to provide to the Secretary concerned an accounting of expenditures and investments of amounts paid to the payee.

(G) In the case of an annuitant referred to in paragraph (1)(B)—

(i) procedures for determining incompetency and for selecting a payee to represent the annuitant for the purposes of this section, including provisions for notifying the annuitant of the actions being taken to make such a determination and to select a representative payee, an opportunity for the annuitant to review the evidence being considered, and an opportunity for the

annuitant to submit additional evidence before the determination is made; and

(ii) standards for determining incompetency, including standards for determining the sufficiency of medical evidence and other evidence.

(H) Provisions for any other matter that the President considers appropriate in connection with the payment of an annuity in the case of a person referred to in paragraph (1).

(3) LEGAL EFFECT OF PAYMENT TO GUARDIAN OR FIDUCIARY.—An annuity paid to a person on behalf of an annuitant in accordance with the regulations prescribed pursuant to paragraph (1) discharges the obligation of the United States for payment to the annuitant of the amount of the annuity so paid.

(Added P.L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 711; amended P.L. 99–145, § 724, Nov. 8, 1985, 99 Stat. 678; P.L. 102–190, § 654(a), Dec. 5, 1991, 105 Stat. 1389; P.L. 104–201, § 634, Sept. 23, 1996, 110 Stat. 2577.)

SUBCHAPTER III—SUPPLEMENTAL SURVIVOR BENEFIT PLAN

Sec.
1456. Supplemental spouse coverage: establishment of plan; definitions.
1457. Supplemental spouse coverage: payment of annuity; amount.
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§ 1456. Supplemental spouse coverage: establishment of plan; definitions

(a) ESTABLISHMENT OF SUPPLEMENTAL SURVIVOR BENEFIT PLAN.—

(1) PLAN.—The Secretary of Defense shall carry out a program in accordance with this subchapter to enable participants in the Survivor Benefit Plan who are providing coverage for a spouse or former spouse beneficiary under that Plan to also provide a supplemental annuity for that spouse or former spouse beginning when the participant dies or when the spouse or former spouse becomes 62 years of age, whichever is later, in order to offset the effects of the two-tier annuity computation under the Survivor Benefit Plan.

(2) NAME OF PLAN.—The program under this subchapter shall be known as the Supplemental Survivor Benefit Plan.

(b) DEFINITIONS.—

(1) INCORPORATION OF DEFINITIONS APPLICABLE TO SURVIVOR BENEFIT PLAN.—The definitions in section 1447 of this title apply in this subchapter.

(2) SUPPLEMENTAL SPOUSE ANNUITY DEFINED.—In this subchapter, the term "supplemental spouse annuity" means an annuity provided to a spouse or former spouse under this subchapter.

(Added by P.L. 101–189, § 1404, Nov. 29, 1989, 103 Stat. 1579.)

§ 1457. Supplemental spouse coverage: payment of annuity; amount

(a) COMMENCEMENT OF ANNUITY.—A supplemental spouse annuity commences on the later of—

(1) the day on which an annuity under the Survivor Benefit Plan becomes payable to the beneficiary; or

(2) the first day of the first month after the month in which the beneficiary becomes 62 years of age.

(b) AMOUNT OF ANNUITY FOR BENEFICIARY OF PERSON PROVIDING STANDARD ANNUITY UNDER SBP.—In the case of a person providing a standard annuity for a spouse or former spouse beneficiary under the Survivor Benefit Plan and providing a supplemental spouse annuity for that beneficiary under this subchapter, the monthly annuity payable to the beneficiary under this subchapter shall be the amount equal to 5, 10, 15, or 20 percent of the base amount under the Survivor Benefit Plan of the person providing the annuity, as specified by that person when electing to provide the annuity. The annuity shall be computed as of the date of the death of the person providing the annuity, notwithstanding that the annuity is not payable at that time by reason of subsection (a).

(c) AMOUNT OF ANNUITY FOR BENEFICIARY OF PERSON PROVIDING RESERVE-COMPONENT ANNUITY UNDER SBP.—In the case of a person providing a reserve-component annuity for a spouse or former spouse beneficiary under the Survivor Benefit Plan and providing a supplemental spouse annuity for that beneficiary under this subchapter, the monthly annuity payable to that beneficiary under this subchapter shall be determined as follows:

(1) BENEFICIARY INITIALLY 62 YEARS OF AGE OR OLDER.—If the beneficiary is 62 years of age or older when the beneficiary becomes entitled to the reserve-component annuity under the Survivor Benefit Plan, the monthly amount of the supplemental spouse annuity is the difference between—

(A) the amount of the reserve-component annuity under the Survivor Benefit Plan to which the beneficiary would be entitled if that beneficiary were under 62 years of age (as computed under section 1451(a)(2)(A) of this title); and

(B) the amount of the reserve-component annuity to which the beneficiary is entitled (as computed under section 1451(a)(2)(B) of this title).

(2) BENEFICIARY INITIALLY UNDER 62 YEARS OF AGE.—If the beneficiary is under 62 years of age when the beneficiary becomes entitled to the reserve-component annuity under the Survivor Benefit Plan, the monthly amount of the supplemental spouse annuity of that beneficiary (commencing on the date specified in subsection (a)(2)) is the amount by which the beneficiary's annuity under the Survivor Benefit Plan is reduced (on the same day) under section 1451(d) of this title.

(3) EXCLUSION OF DIC OFFSET.—Computations under paragraphs (1) and (2) shall be made without regard to any reduction required under section 1450(c) of this title (or any other

provision of law) with respect to the receipt of dependency and indemnity compensation under section 1311 of title 38.

(d) ADJUSTMENTS IN ANNUITIES.—

(1) PERIODIC ADJUSTMENTS (COLAS).—Whenever annuities under the Survivor Benefit Plan are increased under section 1451(g)(1) of this title (or any other provision of law) or recomputed under section 1451(i) of this title, each annuity under this subchapter shall be increased or recomputed at the same time. The increase shall, in the case of any such annuity, be by the same percent as the percent by which the annuity of that beneficiary is increased or recomputed under the Survivor Benefit Plan.

(2) ROUNDING DOWN.—The monthly amount of an annuity payable under this subchapter, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(e) TERMINATION OF ANNUITY.—A supplemental spouse annuity terminates effective as of the first day of the month in which the beneficiary dies or otherwise becomes ineligible to continue to receive an annuity under the Survivor Benefit Plan.

(Added P.L. 101–189, § 1404, Nov. 29, 1989, 103 Stat. 1580; amended P.L. 102–190, § 653(b), Dec. 5, 1991, 105 Stat. 1388; P.L. 103–337, § 1070(e)(5), Oct. 5, 1994, 108 Stat. 2859.)

§ 1458. Supplemental spouse coverage: eligible participants; elections of coverage

(a) COVERAGE.—

(1) IN GENERAL.—A person who provides an annuity for a spouse or former spouse under the Survivor Benefit Plan at the maximum level may elect in accordance with this section to provide a supplemental spouse annuity for that spouse or former spouse.

(2) COVERAGE CONTINGENT ON CONCURRENT SBP COVERAGE.—When a person providing a supplemental spouse annuity under this subchapter ceases to be a participant under the Survivor Benefit Plan, that person's coverage under this subchapter automatically terminates.

(3) ELECTIONS TO BE VOLUNTARY.—A person may not be ordered or required to elect (or to enter into an agreement to elect) to provide a spouse or former spouse with a supplemental spouse annuity under this subchapter. Except as provided in section 1459(b) of this title, in no case shall a person be deemed to have made an election to provide a supplemental annuity for a spouse or former spouse of such person.

(b) LIMITATION ON ELIGIBILITY FOR CERTAIN SBP PARTICIPANTS NOT AFFECTED BY TWO-TIER ANNUITY COMPUTATION.—A person is not eligible to make an election under this section if (as determined by the Secretary concerned) the annuity of a spouse or former spouse beneficiary of that person under the Survivor Benefit Plan will be computed under section 1451(e) of this title. However, such a person may waive the right to have that annuity computed under section 1451(e) of this title. Any such election is irrevocable. A person making such a waiver may make an election under this section as in the case of any other participant in the Survivor Benefit Plan.

(c) ELECTION OF SUPPLEMENTAL SPOUSE ANNUITY BEFORE BECOMING A PARTICIPANT IN SBP.—

(1) IN GENERAL.—A person anticipating becoming a participant in the Survivor Benefit Plan who has a spouse or former spouse may elect to provide a supplemental spouse annuity under this subchapter for that spouse or former spouse.

(2) CONDITIONS ON ELECTION.—An election under paragraph (1)—

(A) must be made before the day on which the person making the election first becomes a participant in the Survivor Benefit Plan; and

(B) shall be made in the same manner as an election under section 1448 of this title that is available to that person at the same time.

(3) REQUIREMENT OF SPOUSE ANNUITY UNDER SBP.—If upon becoming a participant in the Survivor Benefit Plan under section 1448 of this title the person is not providing an annuity for the person's spouse or former spouse, an election under this section to provide a supplemental spouse annuity shall be void.

(4) SPECIAL RULE FOR RCSBP PARTICIPANTS.—For the purposes of this subsection, a person providing a reserve-component annuity under the Survivor Benefit Plan shall not be considered to have become a participant in that Plan until the end of the 90-day period referred to in clause (iii) of section 1448(a)(2)(B) of this title.

(d) ELECTION OF FORMER SPOUSE AFTER BECOMING ELIGIBLE FOR SURVIVOR BENEFIT PLAN.—

(1) ELECTION OF COVERAGE.—A person who elects under section 1448(b)(3) of this title to provide coverage under the Survivor Benefit Plan for a former spouse may elect to provide a supplemental spouse annuity for that former spouse. Any such election must be signed by the person and received by the Secretary concerned within one year after the date of the decree of divorce, dissolution, or annulment.

(2) EFFECTIVE DATE OF ELECTION.—An election under paragraph (1) is effective as of the same day as the election under section 1448(b)(3) of this title.

(e) NOTICE TO SPOUSE OF FORMER SPOUSE COVERAGE.—If a married person who is eligible to provide an annuity under the Survivor Benefit Plan elects to provide an annuity under that Plan for a former spouse (or for a former spouse and dependent child) and elects under this section to provide a supplemental spouse annuity for that former spouse, the notification to the person's spouse under section 1448(a)(3)(E) or 1448(b)(3)(D) of this title shall include notice of the election under this section.

(f) IRREVOCABILITY OF ELECTIONS.—

(1) STANDARD ANNUITY.—An election under subsection (c) to provide a supplemental spouse annuity by a person providing a standard annuity under the Survivor Benefit Plan is irrevocable if not revoked on the day before the date on which the person first becomes a participant in that Plan.

(2) RESERVE-COMPONENT ANNUITY.—An election under subsection (c) to provide a supplemental spouse annuity by a person providing a reserve-component annuity under the Survivor Benefit Plan is irrevocable if not revoked before the end of the 90-day period with respect to that person referred to in clause (iii) of section 1448(a)(2)(B) of this title.

(3) FORMER SPOUSE ELECTIONS.—An election under subsection (d) may not be revoked except in accordance with subsection (h).

(g) REMARRIAGE AFTER RETIREMENT.—

(1) ELECTION UPON REMARRIAGE.—A person—

(A) who is a participant in the Survivor Benefit Plan and is providing coverage under that Plan for a spouse (or a spouse and child) but is not a participant in the Supplemental Survivor Benefit Plan;

(B) who does not have an eligible spouse beneficiary under that Plan; and

(C) who remarries,

may (subject to paragraph (2)) elect to provide a supplemental spouse annuity under this subchapter for the person's spouse.

(2) LIMITATIONS ON ELECTION.—A person may not make an election under paragraph (1) if the person elects under section 1448(a)(6)(A) of this title not to provide coverage under the Survivor Benefit Plan for the person's spouse.

(3) CONDITIONS ON ELECTION.—An election under paragraph (1)—

(A) is irrevocable;

(B) shall be made within one year after the remarriage; and

(C) shall be made in such form and manner as may be prescribed in regulations under section 1460b of this title.

(h) CHANGE OF FORMER SPOUSE BENEFICIARY TO SPOUSE OR CHILD BENEFICIARY.—If a person who is providing an annuity for a former spouse under the Survivor Benefit Plan and a supplemental spouse annuity for that former spouse under this subchapter elects under section 1450(f)(1) of this title to change the beneficiary of the annuity under the Survivor Benefit Plan in order to provide an annuity under that Plan to that person's spouse or to a dependent child—

(1) the beneficiary under the supplemental spouse annuity shall be deemed to be changed to that spouse also, if the change under section 1450(f)(1) was to provide the annuity for the person's spouse; and

(2) participation in the supplemental spouse annuity program shall be terminated, if the change under section 1450(f)(1) of this title was to provide the annuity for a dependent child.

(i) REINSTATEMENT OF DISCONTINUED ANNUITY UPON REINSTATEMENT OF SBP ANNUITY.—If a person who is providing an annuity for a former spouse under the Survivor Benefit Plan and a supplemental spouse annuity for that former spouse under this subchapter discontinues participation in the Survivor Benefit Plan under any provision of law and subsequently resumes participation in that Plan under any provision of law, the participation of that

person in the Supplemental Survivor Benefit Plan under this chapter shall be reinstated effective on the day on which participation in the Survivor Benefit Plan resumes.

(Added P.L. 101–189, § 1404, Nov. 29, 1989, 103 Stat. 1581; amended P.L. 102–190, § 653(c), Dec. 5, 1991, 105 Stat. 1388.)

§ 1459. Former spouse coverage: special rules

(a) DISCLOSURE OF VOLUNTARY WRITTEN AGREEMENT WITH FORMER SPOUSE.—A person who elects under section 1458 of this title to provide a supplemental spouse annuity for a former spouse shall, at the time of making the election, provide the Secretary concerned with a written statement (in a form to be prescribed by that Secretary and signed by such person and former spouse) setting forth whether the election is being made pursuant to a written agreement previously entered into voluntarily by such person as a part of or incident to a proceeding of divorce, dissolution, or annulment and (if so) whether such voluntary written agreement has been incorporated in, or ratified or approved by, a court order.

(b) ENFORCEMENT OF VOLUNTARY WRITTEN AGREEMENTS INCIDENT TO DIVORCE, ETC.—

(1) ELECTIONS DEEMED TO HAVE BEEN MADE.—If a person who is eligible to elect under section 1458 of this title to provide a supplemental spouse annuity for a former spouse voluntarily enters, incident to a proceeding of divorce, dissolution, or annulment, into a written agreement to elect to provide a supplemental annuity for a former spouse and that agreement is incorporated in or ratified or approved by a court order or is filed with the court of appropriate jurisdiction in accordance with applicable State law, and such person then fails or refuses to make the election as set forth in the voluntary agreement, such person shall be deemed to have made the election if the Secretary concerned—

(A) receives from the former spouse concerned a written request, in such manner as the Secretary shall prescribe, requesting that the election be deemed to have been made; and

(B) receives (i) a copy of the court order, regular on its face, which incorporates, ratifies, or approves the written agreement of such person, or (ii) a statement from the clerk of the court (or other appropriate official) that such agreement has been filed with the court in accordance with applicable State law.

(2) TIME LIMIT FOR REQUEST TO SECRETARY CONCERNED.—An election may not be deemed to have been made under paragraph (1) in the case of any person unless the Secretary concerned receives a request from the former spouse within one year after the date of the court order or filing involved.

(3) EFFECTIVE DATE OF DEEMED ELECTION.—An election deemed to have been made under paragraph (1) shall become effective on the first day of the first month which begins after the date of the court order or filing involved.

(Added P.L. 101–189, § 1404, Nov. 29, 1989, 103 Stat. 1584.)

§ 1460. Supplemental spouse coverage: reductions in retired pay

(a) REDUCTION REQUIRED.—The retired pay of a person who elects to provide a supplemental spouse annuity shall be reduced each month as required under regulations prescribed under subsection (b).

(b) REGULATIONS DETERMINING AMOUNT OF REDUCTION.—Regulations for the purposes of subsection (a) shall be prescribed by the Secretary of Defense. Those regulations shall be based upon assumptions used by the Department of Defense Retirement Board of Actuaries in the valuation of military retirement and survivor benefit programs under chapter 74 of this title (including assumptions relating to mortality, interest rates, and inflation) and shall ensure the following:

(1) That reductions in retired pay under this section are made in amounts sufficient to provide that the Supplemental Survivor Benefit Plan operates on an actuarially neutral basis.

(2) That such reductions are stated, with respect to the base amount (under the Survivor Benefit Plan) of any person, as a constant percentage of that base amount and, in the case of a person providing a supplemental spouse annuity computed under section 1457(b) of this title, a constant percentage of such person's base amount for each 5 percent increment specified in accordance with that section.

(3) That the amounts of such reductions in retired pay of persons participating in the Supplemental Survivor Benefit Plan (stated as a percentage of base amount)—

(A) are based on the age of the participant at the time participation in that Plan is first effective under this subchapter; and

(B) are not determined by any other demographic differentiation among participants in the Plan.

(4) That such reductions are otherwise determined in accordance with generally accepted actuarial principles and practices.

(c) SUSPENSION OF REDUCTION WHEN THERE IS NO SPOUSE BENEFICIARY.—A reduction in retired pay under this section shall not be made in the case of any person during any month in which there is no eligible spouse or former spouse beneficiary.

(d) ADJUSTMENTS IN AMOUNT OF REDUCTION.—Whenever the amount of the reduction in retired pay of a participant in the Survivor Benefit Plan is increased under section 1452(h) of this title or recomputed under section 1452(i) of this title, the amount of the reduction in that retired pay under this section shall be increased or recomputed, as the case may be, at the same time and in the same manner as that increase or recomputation.

(e) ADMINISTRATIVE PROVISIONS.—The provisions of subsections (d) and (f) of section 1452 of this title apply with respect to the participation of a person in the Supplemental Survivor Benefit Plan in the same manner that those provisions apply under the Survivor Benefit Plan.

(Added P.L. 101–189, § 1404, Nov. 29, 1989, 103 Stat. 1584; amended P.L. 102–190, § 653(b)(2), Dec. 5, 1991, 105 Stat. 1388.)

§ 1460a. Incorporation of certain administrative provisions

(a) APPLICABILITY OF CERTAIN PROVISIONS OF SBP LAW.—The provisions of sections 1449, 1452(g), 1453, and 1454 of this title are applicable to a person eligible to make an election, and to an election, under this subchapter in the same manner as if made under subchapter II.

(b) OTHER APPLICABLE PROVISIONS.—Except to the extent otherwise provided in regulations prescribed under section 1460b of this title, the provisions of subsections (h), (i), and (l) of section 1450 of this title apply to supplemental spouse annuities in the same manner that those provisions apply to annuities under the Survivor Benefit Plan.

(Added P.L. 101–189, § 1404(a)(1), Nov. 29, 1989, 103 Stat. 1585; amended P.L. 101–510, § 1484(k)(5), Nov. 5, 1990, 104 Stat. 1719.)

§ 1460b. Regulations

The President shall prescribe regulations to carry out this subchapter. Those regulations shall, so far as practicable, be uniform for the uniformed services and shall, so far as practicable, incorporate provisions of the regulations in effect under section 1455 of this title.

(Added P.L. 101–189, § 1404(a)(1), Nov. 29, 1989, 103 Stat. 1585.)

CHAPTER 74—DEPARTMENT OF DEFENSE MILITARY RETIREMENT FUND

Sec.
1461. Establishment and purpose of Fund; definition.
1462. Assets of Fund.
1463. Payments from the Fund.
1464. Board of Actuaries.
1465. Determination of contributions to the Fund.
1466. Payments into the Fund.
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§ 1461. Establishment and purpose of Fund; definition

(a) There is established on the books of the Treasury a fund to be known as the Department of Defense Military Retirement Fund (hereinafter in this chapter referred to as the "Fund"), which shall be administered by the Secretary of the Treasury. The Fund shall be used for the accumulation of funds in order to finance on an actuarially sound basis liabilities of the Department of Defense under military retirement and survivor benefit programs.

(b) In this chapter, the term "military retirement and survivor benefit programs" means—

(1) the provisions of this title creating entitlement to, or determining the amount of, retired or retainer pay;

(2) the programs under the jurisdiction of the Department of Defense providing annuities for survivors of members and former members of the armed forces, including chapter 73 of this title, section 4 of Public Law 92–425, and section 5 of Public Law 96–402; and

(3) the authority provided in section 1408(h) of this title.

(Added P.L. 98–94, § 925(a)(1), Sept. 24, 1983, 97 Stat. 644; amended P.L. 101–189, § 1622(e)(7), Nov. 29, 1989, 103 Stat. 1605; P.L. 102–484, § 653(b)(1), Oct. 23, 1992, 106 Stat. 2428.)

§ 1462. Assets of Fund

There shall be deposited into the Fund the following, which shall constitute the assets of the Fund:

(1) Amounts paid into the Fund under section 1466 of this title.

(2) Any amount appropriated to the Fund.

(3) Any return on investment of the assets of the Fund.

(Added P.L. 98–94, § 925(a)(1), Sept. 24, 1983, 97 Stat. 645.)

§ 1463. Payments from the Fund

(a) There shall be paid from the Fund—

(1) retired pay payable to members on the retired lists of the Army, Navy, Air Force, and Marine Corps;

(2) retired pay payable under chapter 1223 of this title to former members of the armed forces (other than retired pay payable by the Secretary of Transportation);

(3) retainer pay payable to members of the Fleet Reserve and Fleet Marine Corps Reserve;

(4) benefits payable under programs under the jurisdiction of the Department of Defense that provide annuities for survivors of members and former members of the armed forces, including chapter 73 of this title, section 4 of Public Law 92–425, and section 5 of Public Law 96–402; and

(5) amounts payable under section 1408(h) of this title.

(b) The assets of the Fund are hereby made available for payments under subsection (a).

(Added P.L. 98–94, § 925(a)(1), Sept. 24, 1983, 97 Stat. 645; amended P.L. 101–189, § 651(c), Nov. 29, 1989, 103 Stat. 1460; P.L. 102–484, § 653(b)(2), Oct. 23, 1992, 106 Stat. 2428; P.L. 104–106, § 1501(c)(18), Feb. 10, 1996, 110 Stat. 499.)

§ 1464. Board of Actuaries

(a)(1) There is established in the Department of Defense a Department of Defense Retirement Board of Actuaries (hereinafter in this chapter referred to as the "Board"). The Board shall consist of three members, who shall be appointed by the President from among qualified professional actuaries who are members of the Society of Actuaries.

(2)(A) Except as provided in subparagraph (B), the members of the Board shall serve for a term of 15 years, except that a member of the Board appointed to fill a vacancy occurring before the end of the term for which his predecessor was appointed shall only serve until the end of such term. A member may serve after the end of his term until his successor has taken office. A member of the Board may be removed by the President for misconduct or failure to perform functions vested in the Board, and for no other reason.

(B) Of the members of the Board who are first appointed under this subsection, one each shall be appointed for terms ending five, ten, and fifteen years, respectively, after the date of appointment, as designated by the President at the time of appointment.

(3) A member of the Board who is not otherwise an employee of the United States is entitled to receive pay at the daily equivalent of the annual rate of basic pay of the highest rate of basic pay then currently being paid under the General Schedule of subchapter III of chapter 53 of title 5, for each day the member is engaged in the performance of duties vested in the Board and is entitled to travel expenses, including a per diem allowance, in accordance with section 5703 of title 5.

(b) The Board shall report to the Secretary of Defense annually on the actuarial status of the Fund and shall furnish its advice and opinion on matters referred to it by the Secretary.

(c) The Board shall review valuations of the Fund under section 1465(c) of this title and under chapter 95 of title 31 and shall report periodically, not less than once every four years, to the President and Congress on the status of the Fund. The Board shall include in such reports recommendations for such changes as in the Board's judgment are necessary to protect the public interest and maintain the Fund on a sound actuarial basis.

(Added P.L. 98–94, § 925(a)(1), Sept. 24, 1983, 97 Stat. 645; amended P.L. 98–525, § 1405(27), Oct. 19, 1984, 98 Stat. 2623.)

§ 1465. Determination of contributions to the Fund

(a) Not later than six months after the Board of Actuaries is first appointed, the Board shall determine the amount that is the present value (as of October 1, 1984) of future benefits payable from the Fund that are attributable to service in the armed forces performed before October 1, 1984. That amount is the original unfunded liability of the Fund. The Board shall determine the period of time over which the original unfunded liability should be liquidated and shall determine an amortization schedule for the liquidation of such liability over that period. Contributions to the Fund for the liquidation of the original unfunded liability in accordance with such schedule shall be made as provided in section 1466(b) of this title.

(b)(1) The Secretary of Defense shall determine each year, in sufficient time for inclusion in budget requests for the following fiscal year, the total amount of Department of Defense contributions to be made to the Fund during that fiscal year under section 1466(a) of this title. That amount shall be the sum of the following:

(A) The product of—

(i) the current estimate of the value of the single level percentage of basic pay to be determined under subsection (c)(1)(A) at the time of the next actuarial valuation under subsection (c); and

(ii) the total amount of basic pay expected to be paid during that fiscal year to members of the armed forces (other than the Coast Guard) on active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only).

(B) The product of—

(i) the current estimate of the value of the single level percentage of basic pay and of compensation (paid pursuant to section 206 of title 37) to be determined under subsection (c)(1)(B) at the time of the next actuarial valuation under subsection (c); and

(ii) the total amount of basic pay and of compensation (paid pursuant to section 206 of title 37) expected to be paid during that fiscal year to members of the Ready Reserve of the armed forces (other than the Coast Guard and other than members on full-time National Guard duty other than for training) who are not otherwise described in subparagraph (A)(ii).

(2) The amount determined under paragraph (1) for any fiscal year is the amount needed to be appropriated to the Department of Defense for that fiscal year for payments to be made to the Fund during that year under section 1466(a) of this title. The President shall include not less than the full amount so determined in the budget transmitted to Congress for that fiscal year under section 1105 of title 31. The President may comment and make recommendations concerning any such amount.

(c)(1) Not less often than every four years, the Secretary of Defense shall carry out an actuarial valuation of Department of De-

fense military retirement and survivor benefit programs. Each actuarial valuation of such programs shall include—

(A) a determination (using the aggregate entry-age normal cost method) of a single level percentage of basic pay for members of the armed forces (other than the Coast Guard) on active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only); and

(B) a determination (using the aggregate entry-age normal cost method) of a single level percentage of basic pay and of compensation (paid pursuant to section 206 of title 37) for members of the Ready Reserve of the armed forces (other than the Coast Guard and other than members on full-time National Guard duty other than for training) who are not otherwise described by subparagraph (A).

Such single level percentages shall be used for the purposes of subsection (b) and section 1466(a) of this title.

(2) If at the time of any such valuation (or any valuation carried out in order to comply with chapter 95 of title 31) there has been a change in benefits under a military retirement or survivior benefit program that has been made since the last such valuation and such change in benefits increases or decreases the present value of amounts payable from the Fund, the Secretary of Defense shall determine an amortization methodology and schedule for the amortization of the cumulative unfunded liability (or actuarial gain to the Fund) created by such change and any previous such changes so that the present value of the sum of the amortization payments (or reductions in payments that would otherwise be made) equals the cumulative increase (or decrease) in the present value of such amounts.

(3) If at the time of any such valuation (or any valuation carried out in order to comply with chapter 95 of title 31), the Secretary of Defense determines that, based upon changes in actuarial assumptions since the last valuation, there has been an actuarial gain or loss to the Fund, the Secretary shall determine an amortization methodology and schedule for the amortization of the cumulative gain or loss to the Fund created by such change in assumptions and any previous such changes in assumptions through an increase or decrease in the payments that would otherwise be made to the Fund.

(4) Contributions to the Fund in accordance with amortization schedules under paragraphs (2) and (3) shall be made as provided in section 1466(b) of this title.

(d) All determinations under this section shall be made using methods and assumptions approved by the Board of Actuaries (including assumptions of interest rates and inflation) and in accordance with generally accepted actuarial principles and practices.

(e) The Secretary of Defense shall provide for the keeping of such records as are necessary for determining the actuarial status of the Fund.

(Added P.L. 98–94, § 925(a)(1), Sept. 24, 1983, 97 Stat. 646; amended P.L. 98–525, § 1405(28), Oct. 19, 1984, 98 Stat. 2623; P.L. 99–500, § 101(c) [§ 9131], Oct. 18, 1986, 100 Stat. 1783–128; P.L. 99–591, § 101(c) [§ 9131], Oct. 30, 1986, 100 Stat. 3341–128; P.L. 99–661, § 661(a), Nov. 14, 1986, 100 Stat. 3891.)

§ 1466. Payments into the Fund

(a) The Secretary of Defense shall pay into the Fund at the end of each month as the Department of Defense contribution to the Fund for that month the amount that is the sum of the following:

(1) The product of—

(A) the level percentage of basic pay determined using all the methods and assumptions approved for the most recent (as of the first day of the current fiscal year) actuarial valuation under section 1465(c)(1)(A) of this title (except that any statutory change in the military retirement and survivor benefit systems that is effective after the date of that valuation and on or before the first day of the current fiscal year shall be used in such determination); and

(B) the total amount of basic pay accrued for that month by members of the armed forces (other than the Coast Guard) on active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only).

(2) The product of—

(A) the level percentage of basic pay and of compensation (paid pursuant to section 206 of title 37) determined using all the methods and assumptions approved for the most recent (as of the first day of the current fiscal year) actuarial valuation under section 1465(c)(1)(B) of this title (except that any statutory change in the military retirement and survivor benefit systems that is effective after the date of that valuation and on or before the first day of the current fiscal year shall be used in such determination); and

(B) the total amount of basic pay and of compensation (paid pursuant to section 206 of title 37) accrued for that month by members of the Ready Reserve of the armed forces (other than the Coast Guard and other than members on full-time National Guard duty other than for training) who are not otherwise described in paragraph (1)(B).

Amounts paid into the Fund under this subsection shall be paid from funds available for the pay of members of the armed forces under the jurisdiction of the Secretary of a military department.

(b)(1) At the beginning of each fiscal year the Secretary of the Treasury shall promptly pay into the Fund from the General Fund of the Treasury the amount certified to the Secretary by the Secretary of Defense under paragraph (3). Such payment shall be the contribution to the Fund for that fiscal year required by sections 1465(a) and 1465(c) of this title.

(2) At the beginning of each fiscal year the Secretary of Defense shall determine the sum of the following:

(A) The amount of the payment for that year under the amortization schedule determined by the Board of Actuaries under section 1465(a) of this title for the amortization of the original unfunded liability of the Fund.

(B) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1465(c)(2) of this

title for the amortization of any cumulative unfunded liability (or any gain) to the Fund resulting from changes in benefits.

(C) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1465(c)(3) of this title for the amortization of any cumulative actuarial gain or loss to the Fund.

(3) The Secretary of Defense shall promptly certify the amount determined under paragraph (2) each year to the Secretary of the Treasury.

(c)(1) The Secretary of Defense shall pay into the Fund at the beginning of each fiscal year such amount as may be necessary to pay the cost to the Fund for that fiscal year resulting from the repeal, as of October 1, 1999, of section 5532 of title 5, including any actuarial loss to the Fund resulting from increased benefits paid from the Fund that are not fully covered by the payments made to the Fund for that fiscal year under subsections (a) and (b).

(2) Amounts paid into the Fund under this subsection shall be paid from funds available for the pay of members of the armed forces under the jurisdiction of the Secretary of a military department.

(3) The Department of Defense Retirement Board of Actuaries shall determine, for each armed force, the amount required under paragraph (1) to be deposited in the Fund each fiscal year.

(Added P.L. 98–94, § 925(a)(1), Sept. 24, 1983, 97 Stat. 647; amended by identical amendments P.L. 99–500, P.L. 99–591, §§ 101(c) [§ 9131], 101(c) [§ 9131], Oct. 18, Oct. 30, 1986, 100 Stat. 1783–128, 3341–128; amended P.L. 99–661, § 661(b), Nov. 14, 1986, 100 Stat. 3892; P.L. 100–26, § 7(a)(3), April 21, 1987, 101 Stat. 275; amended (effective Sept. 1, 1987) by identical amendments P.L. 99–500, P.L. 99–591, §§ 101(c) [§ 9103(3)], 101(c) [§ 9103(3)], Oct. 18, Oct. 30, 1986, 100 Stat. 1783–118, 3341–118; P.L. 106–65, § 651(b), Oct. 5, 1999, 113 Stat. 664.)

§ 1467. Investment of assets of Fund

The Secretary of the Treasury shall invest such portion of the Fund as is not in the judgment of the Secretary of Defense required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable to the needs of the Fund, as determined by the Secretary of Defense, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to and form a part of the Fund.

(Added P.L. 98–94, § 925(a)(1), Sept 24, 1983, 97 Stat. 648.)

CHAPTER 75—DECEASED PERSONNEL

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SUBCHAPTER I—DEATH INVESTIGATIONS

Sec.
1471. Forensic pathology investigations.

§ 1471. Forensic pathology investigations

(a) AUTHORITY.—Under regulations prescribed by the Secretary of Defense, the Armed Forces Medical Examiner may conduct a forensic pathology investigation to determine the cause or manner of death of a deceased person if such an investigation is determined to be justified under circumstances described in subsection (b). The investigation may include an autopsy of the decedent's remains.

(b) BASIS FOR INVESTIGATION.—(1) A forensic pathology investigation of a death under this section is justified if at least one of the circumstances in paragraph (2) and one of the circumstances in paragraph (3) exist.

(2) A circumstance under this paragraph is a circumstance under which—

(A) it appears that the decedent was killed or that, whatever the cause of the decedent's death, the cause was unnatural;

(B) the cause or manner of death is unknown;

(C) there is reasonable suspicion that the death was by unlawful means;

(D) it appears that the death resulted from an infectious disease or from the effects of a hazardous material that may have an adverse effect on the military installation or community involved; or

(E) the identity of the decedent is unknown.

(3) A circumstance under this paragraph is a circumstance under which—

(A) the decedent—

(i) was found dead or died at an installation garrisoned by units of the armed forces that is under the exclusive jurisdiction of the United States;

(ii) was a member of the armed forces on active duty or inactive duty for training;

(iii) was recently retired under chapter 61 of this title as a result of an injury or illness incurred while a member on active duty or inactive duty for training; or

(iv) was a civilian dependent of a member of the armed forces and was found dead or died outside the United States;

(B) in any other authorized Department of Defense investigation of matters which involves the death, a factual determination of the cause or manner of the death is necessary; or

(C) in any other authorized investigation being conducted by the Federal Bureau of Investigation, the National Transportation Safety Board, or any other Federal agency, an authorized official of such agency with authority to direct a forensic pathology investigation requests that the Armed Forces Medical Examiner conduct such an investigation.

(c) DETERMINATION OF JUSTIFICATION.—(1) Subject to paragraph (2), the determination that a circumstance exists under paragraph (2) of subsection (b) shall be made by the Armed Forces Medical Examiner.

(2) A commander may make the determination that a circumstance exists under paragraph (2) of subsection (b) and require a forensic pathology investigation under this section without regard to a determination made by the Armed Forces Medical Examiner if—

(A) in a case involving circumstances described in paragraph (3)(A)(i) of that subsection, the commander is the commander of the installation where the decedent was found dead or died; or

(B) in a case involving circumstances described in paragraph (3)(A)(ii) of that subsection, the commander is the commander of the decedent's unit at a level in the chain of command designated for such purpose in the regulations prescribed by the Secretary of Defense.

(d) LIMITATION IN CONCURRENT JURISDICTION CASES.—(1) The exercise of authority under this section is subject to the exercise of primary jurisdiction for the investigation of a death—

(A) in the case of a death in a State, by the State or a local government of the State; or

(B) in the case of a death in a foreign country, by that foreign country under any applicable treaty, status of forces agreement, or other international agreement between the United States and that foreign country.

(2) Paragraph (1) does not limit the authority of the Armed Forces Medical Examiner to conduct a forensic pathology investigation of a death that is subject to the exercise of primary jurisdiction by another sovereign if the investigation by the other sovereign is concluded without a forensic pathology investigation that the Armed Forces Medical Examiner considers complete. For the purposes of the preceding sentence a forensic pathology investigation is incomplete if the investigation does not include an autopsy of the decedent.

(e) PROCEDURES.—For a forensic pathology investigation under this section, the Armed Forces Medical Examiner shall—

(1) designate one or more qualified pathologists to conduct the investigation;

(2) to the extent practicable and consistent with responsibilities under this section, give due regard to any applicable law protecting religious beliefs;

(3) as soon as practicable, notify the decedent's family, if known, that the forensic pathology investigation is being conducted;

(4) as soon as practicable after the completion of the investigation, authorize release of the decedent's remains to the family, if known; and

(5) promptly report the results of the forensic pathology investigation to the official responsible for the overall investigation of the death.

(f) DEFINITION OF STATE.—In this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and Guam.

SUBCHAPTER II—DEATH BENEFITS

Sec.
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§ 1475. Death gratuity: death of members on active duty or inactive duty training and of certain other persons

(a) Except as provided in section 1480 of this title, the Secretary concerned shall have a death gratuity paid to or for the survivor prescribed by section 1477 of this title, immediately upon receiving official notification of the death of—

(1) a member of an armed force under his jurisdiction who dies while on active duty or while performing authorized travel to or from active duty;

(2) a Reserve of an armed force who dies while on inactive duty training (other than work or study in connection with a correspondence course of an armed force or attendance, in an inactive status, at an educational institution under the sponsorship of an armed force or the Public Health Service);

(3) any Reserve of an armed force who, when authorized or required by an authority designated by the Secretary, assumed an obligation to perform active duty for training, or inactive duty training (other than work or study in connection with a correspondence course of an armed force or attendance,

in an inactive status, at an educational institution, under the sponsorship of an armed force or the Public Health Service), and who dies while traveling directly to or from that active duty for training or inactive duty training;

(4) any member of a reserve officers' training corps who dies while performing annual training duty under orders for a period of more than 13 days, or while performing authorized travel to or from that annual training duty; or any applicant for membership in a reserve officers' training corps who dies while attending field training or a practice cruise under section 2104(b)(6)(B) of this title or while performing authorized travel to or from the place where the training or cruise is conducted; or

(5) a person who dies while traveling to or from or while at a place for final acceptance, or for entry upon active duty (other than for training), in an armed force, who has been ordered or directed to go to that place, and who—

(A) has been provisionally accepted for that duty; or

(B) has been selected, under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), for service in that armed force.

(b) This section does not apply to the survivors of persons who were temporary members of the Coast Guard Reserve at the time of their death.

(Added P.L. 85–861, § 1(32)(A), Sept. 2, 1958, 72 Stat. 1452; amended P.L. 88–647, § 301(1), Oct. 13, 1964, 78 Stat. 1071; P.L. 96–513, § 511(59), Dec. 12, 1980, 94 Stat. 2925; P.L. 99–661, § 604(e)(1), Nov. 14, 1986, 100 Stat. 3877; P.L. 106–65, § 721(a), (c), Oct. 5, 1999, 113 Stat. 692, 694.)

§ 1476. Death gratuity: death after discharge or release from duty or training

(a)(1) Except as provided in section 1480 of this title, the Secretary concerned shall pay a death gratuity to or for the survivors prescribed in section 1477 of this title of each person who dies within 120 days after discharge or release from—

(A) active duty; or

(B) inactive-duty training (other than work or study in connection with a correspondence course of an armed force or attendance, in an inactive status, at an educational institution under the sponsorship of an armed force or the Public Health Service).

(2) A death gratuity may be paid under paragraph (1) only if the Secretary of Veterans Affairs determines that the death resulted from an injury or disease incurred or aggravated during—

(A) the active duty or inactive-duty training described in paragraph (1); or

(B) travel directly to or from such duty.

(b) For the purpose of this section, the standards and procedures for determining the incurrence or aggravation of a disease or injury are those applicable under the laws relating to disability compensation administered by the Department of Veterans Affairs, except that there is no requirement under this section that any incurrence or aggravation have been in line of duty.

(c) This section does not apply to the survivors of persons who were temporary members of the Coast Guard Reserve at the time of their death.

(Added P.L. 85–861, § 1(32)(A), Sept. 2, 1958, 72 Stat. 1452; amended P.L. 99–661, § 604(e)(2), Nov. 14, 1986, 100 Stat. 3877; P.L. 101–189, § 1621(a)(1), (2), Nov. 29, 1989, 103 Stat. 1602, 1603.)

§ 1477. Death gratuity: eligible survivors

(a) A death gratuity payable upon the death of a person covered by section 1475 or 1476 of this title shall be paid to or for the living survivor highest on the following list:

(1) His surviving spouse.

(2) His children, as prescribed by subsection (b), in equal shares.

(3) If designated by him, any one or more of the following persons:

(A) His parents or persons in loco parentis, as prescribed by subsection (c).

(B) His brothers.

(C) His sisters.

(4) His parents or persons in loco parentis, as prescribed by subsection (c), in equal shares.

(5) His brothers and sisters in equal shares.

Clauses (3) and (5) of this subsection include brothers and sisters of the half blood and those through adoption.

(b) Subsection (a)(2) applies, without regard to age or marital status, to—

(1) legitimate children;

(2) adopted children;

(3) stepchildren who were a part of the decedent's household at the time of his death;

(4) illegitimate children of a female decedent; and

(5) illegitimate children of a male decedent—

(A) who have been acknowledged in writing signed by the decedent;

(B) who have been judicially determined, before the decedent's death, to be his children;

(C) who have been otherwise proved, by evidence satisfactory to the Secretary of Veterans Affairs, to be children of the decedent; or

(D) to whose support the decedent had been judicially ordered to contribute.

(c) Clauses (3) and (4) of subsection (a), so far as they apply to parents and persons in loco parentis, include fathers and mothers through adoption, and persons who stood in loco parentis to the decedent for a period of not less than one year at any time before he acquired a status described in section 1475 or 1476 of this title. However, only one father and one mother, or their counterparts in loco parentis, may be recognized in any case, and preference shall be given to those who exercised a parental relationship on the date, or most nearly before the date, on which the decedent entered that status.

(d) If an eligible survivor dies before he receives the death gratuity, it shall be paid to the living survivor next in the order prescribed by subsection (a).

(Added P.L. 85–861, § 1(32)(A), Sept. 2, 1958, 72 Stat. 1453; amended P.L. 101–189, § 1621(a)(2), Nov. 29, 1989, 103 Stat. 1603.)

§ 1478. Death gratuity: amount

(a) The death gratuity payable under sections 1475 through 1477 of this title shall be $6,000. For this purpose:

(1) A person covered by subsection (a)(1) of section 1475 of this title who died while traveling to or from active duty (other than for training) is considered to have been on active duty on the date of his death.

(2) A person covered by subsection (a)(3) of section 1475 of this title who died while traveling directly to or from active duty for training is considered to have been on active duty for training on the date of his death.

(3) A person covered by subsection (a)(3) of section 1475 of this title who died while traveling directly to or from inactive duty training is considered to have been on inactive duty training on the date of his death.

(4) A person covered by subsection (a)(4) of section 1475 of this title who died while performing annual training duty or while traveling directly to or from that duty is considered to have been entitled, on the date of his death, to the pay prescribed by the first sentence of section 209(c) of title 37. A person covered by section 1475(a)(4) of this title who dies while attending field training or a practice cruise under section 2104(b)(6)(B) of this title, or while traveling directly to or from the place where the training or cruise is conducted, is considered to have been entitled, on the date of his death, to the pay prescribed by the second sentence of section 209(c) of title 37.

(5) A person covered by subsection (a)(5) of section 1475 of this title is considered to have been on active duty, on the date of his death, in the grade that he would have held on final acceptance, or entry on active duty.

(6) A person covered by section 1476 of this title is considered to have been entitled, on the date of his death, to pay at the rate to which he was entitled on the last day on which he performed duty or training.

(7) A person covered by section 1475 or 1476 of this title who performed active duty, or inactive duty training, without pay is considered to have been entitled to basic pay while performing that duty or training.

(8) A person covered by section 1475 or 1476 of this title who incurred a disability while on active duty or inactive duty training and who became entitled to basic pay while receiving hospital or medical care, including out-patient care, for that disability, is considered to have been on active duty or inactive duty training, as the case may be, for as long as he is entitled to that pay.

(b) A person who is discharged, or released from active duty (other than for training), is considered to continue on that duty during the period following the date of his discharge or release that, as determined by the Secretary concerned, is necessary for that person to go to his home by the most direct route. That period may not end before midnight of the day on which the member is discharged or released.

(Added P.L. 85–861, § 1(32)(A), Sept. 2, 1958, 72 Stat. 1454; amended P.L. 88–647, § 301(2), Oct. 13, 1964, 78 Stat. 1071; P.L. 89–718, § 11, Nov. 2, 1966, 80 Stat. 1117; P.L. 102–190, § 652(a), Dec. 5, 1991, 105 Stat. 1387–1388.)

§ 1479. Death gratuity: delegation of determinations, payments

For the purpose of making immediate payments under section 1475 of this title, the Secretary concerned shall—

(1) authorize the commanding officer of a territorial command, installation, or district in which a survivor of a person covered by that section is residing to determine the beneficiary eligible for the death gratuity; and

(2) authorize a disbursing or certifying official of each of those commands, installations, or districts to make the payments to the beneficiary, or certify the payments due them, as the case may be.

(Added P.L. 85–861, § 1(32)(A), Sept. 2, 1958, 72 Stat. 1455; amended P.L. 97–258, § 2(b)(1)(A), Sept. 13, 1982, 96 Stat. 1052.)

§ 1480. Death gratuity: miscellaneous provisions

(a) A payment may not be made under sections 1475–1477 of this title if the decedent was put to death as lawful punishment for a crime or a military offense, unless he was put to death by a hostile force with which the armed forces of the United States were engaged in armed conflict.

(b) A payment may not be made under section 1476 unless the Secretary of Veterans Affairs determines that the decedent was discharged or released, as the case may be, under conditions other than dishonorable from the last period of the duty or training that he performed.

(c) For the purposes of section 1475(a)(3) of this title, the Secretary concerned shall determine whether the decedent was authorized or required to perform the duty or training and whether or not he died from injury so incurred. For the purposes of section 1476 of this title, the Secretary of Veterans Affairs shall make those determinations. In making those determinations, the Secretary concerned or the Secretary of Veterans Affairs, as the case may be, shall consider—

(1) the hour on which the Reserve began to travel directly to or from the duty or training;

(2) the hour at which he was scheduled to arrive for, or at which he ceased performing, that duty or training;

(3) the method of travel used;

(4) the itinerary;

(5) the manner in which the travel was performed; and

(6) the immediate cause of death.

In cases covered by this subsection, the burden of proof is on the claimant.

(d) Payments under sections 1475–1477 of this title shall be made from appropriations available for the payment of members of the armed force concerned.

(Added P.L. 85–861, § 1(32)(A), Sept. 2, 1958, 72 Stat. 1455; amended P.L. 101–189, § 1621(a)(2), (5), Nov. 29, 1989, 103 Stat. 1603.)

§ 1481. Recovery, care, and disposition of remains: decedents covered

(a) The Secretary concerned may provide for the recovery, care, and disposition of the remains of the following persons:

(1) Any Regular of an armed force under his jurisdiction who dies while on active duty.

(2) A member of a reserve component of an armed force who dies while—

(A) on active duty;

(B) performing inactive-duty training;

(C) performing authorized travel directly to or from active duty or inactive-duty training;

(D) remaining overnight immediately before the commencement of inactive-duty training, or remaining overnight, between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training, if the site is outside reasonable commuting distance from the member's residence;

(E) hospitalized or undergoing treatment for an injury, illness, or disease incurred or aggravated while on active duty or performing inactive-duty training; or

(F) either—

(i) serving on funeral honors duty under section 12503 of this title or section 115 of title 32;

(ii) traveling directly to or from the place at which the member is to so serve; or

(iii) remaining overnight at or in the vicinity of that place before so serving, if the place is outside reasonable commuting distance from the member's residence.

[(3) Repealed. P.L. 99–661, § 604(e)(3), Nov. 14, 1986, 100 Stat. 3877.]

(4) Any member of, or applicant for membership in, a reserve officers' training corps who dies while (A) attending a training camp, (B) on an authorized practice cruise, (C) performing authorized travel to or from such a camp or cruise, or (D) hospitalized or undergoing treatment at the expense of the United States for injury incurred, or disease contracted, while attending such a camp, while on such a cruise, or while performing that travel.

(5) Any accepted applicant for enlistment in an armed force under his jurisdiction.

(6) Any person who has been discharged from an enlistment in an armed force under his jurisdiction while a patient in a United States hospital, and who continues to be such a patient until the date of his death.

(7) A person who—

(A) dies as a retired member of an armed force under the Secretary's jurisdiction during a continuous hospitalization of the member as a patient in a United States hospital that began while the member was on active duty for a period of more than 30 days; or

(B) is not covered by subparagraph (A) and, while in a retired status by reason of eligibility to retire under chapter 61 of this title, dies during a continuous hospitalization of the person that began while the person was on active duty as a Regular of an armed force under the Secretary's jurisdiction.

(8) Any military prisoner who dies while in his custody.

(9) To the extent authorized under section 1482(g) of this title, any retired member of an armed force who dies while outside the United States or any individual who dies outside the United States while a dependent of such a member.

(b) This section applies to each person covered by subsection (a)(1)–(7) even though he may have been temporarily absent from active duty, with or without leave, at the time of his death, unless he had been dropped from the rolls of his organization before his death.

(c) In this section, the term "dependent" has the meaning given such term in section 1072(2) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 112; Oct. 13, 1964, P.L. 88–647, § 301(3), 78 Stat. 1071; Nov. 14, 1986, P.L. 99–661, § 604(e)(3), 100 Stat. 3877; Oct. 5, 1994, P.L. 103–337, § 652(a)(1), 108 Stat. 2793; Feb. 10, 1996, P.L. 104–106, § 702(b), 110 Stat. 371; P.L. 105–85, § 513(e), Nov. 18, 1997, 111 Stat. 1732; P.L. 105–261, § 645(a), (b), Oct. 17, 1998, 112 Stat. 2049, 2050; P.L. 106–65, § 578(i)(5), Oct. 5, 1999, 113 Stat. 630.)

§ 1482. Expenses incident to death

(a) Incident to the recovery, care, and disposition of the remains of any decedent covered by section 1481 of this title, the Secretary concerned may pay the necessary expenses of the following:

(1) Recovery and identification of the remains.

(2) Notification to the next of kin or other appropriate person.

(3) Preparation of the remains for burial, including cremation if requested by the person designated to direct disposition of the remains.

(4) Furnishing of a uniform or other clothing.

(5) Furnishing of a casket or urn, or both, with outside box.

(6) Hearse service.

(7) Funeral director's services.

(8) Transportation of the remains, and roundtrip transportation and prescribed allowances for an escort of one person, to the place selected by the person designated to direct disposition of the remains or, if such a selection is not made, to a national or other cemetery which is selected by the Secretary and in which burial of the decedent is authorized.

(9) Interment of the remains.

(10) Presentation of a flag of the United States to the person designated to direct disposition of the remains, except in the case of a military prisoner who dies while in the custody

of the Secretary and while under a sentence that includes a discharge.

(11) Presentation of a flag of equal size to the flag presented under paragraph (10) to the parents or parent, if the person to be presented a flag under paragraph (10) is other than the parent of the decedent. For the purpose of this paragraph, the term "parent" includes a natural parent, a stepparent, a parent by adoption or a person who for a period of not less than one year before the death of the decedent stood in loco parentis to him, and preference under this paragraph shall be given to the persons who exercised a parental relationship at the time of, or most nearly before, the death of the decedent.

(b) If an individual pays any expense payable by the United States under this section, the Secretary concerned shall reimburse him or his representative in an amount not larger than that normally incurred by the Secretary in furnishing the supply or service concerned. If reimbursement by the United States is also authorized under another provision of law or regulation, the individual may elect under which provision to be reimbursed.

(c) Only the following persons may be designated to direct disposition of the remains of a decedent covered by this chapter:

(1) The surviving spouse of the decedent.

(2) Blood relatives of the decedent.

(3) Adoptive relatives of the decedent.

(4) If no person covered by clauses (1)–(3) can be found, a person standing in loco parentis to the decedent.

(d) When, as a result of a disaster involving the multiple deaths of persons covered by section 1481 of this title, the Secretary concerned has possession of commingled remains that cannot be individually identified, and burial of those remains in a common grave in a national cemetery is considered necessary, he may, for the interment services of each known decedent, pay the expenses of round-trip transportation to the cemetery of (1) the person who would have been designated under subsection (c) to direct disposition of the remains if individual identification had been made, and (2) two additional persons selected by that person who are closely related to the decedent. The transportation expenses authorized to be paid under this subsection may not exceed the transportation allowances authorized for members of the armed forces for travel on official business, but no per diem allowance may be paid.

(e) When the remains of a decedent covered by section 1481 of this title, whose death occurs after January 1, 1961, are determined to be nonrecoverable, the person who would have been designated under subsection (c) to direct disposition of the remains if they had been recovered may be—

(1) presented with a flag of the United States; however, if the person designated by subsection (c) is other than a parent of the deceased member, a flag of equal size may also be presented to the parents, and

(2) reimbursed by the Secretary concerned for the necessary expenses of a memorial service.

However, the amount of the reimbursement shall be determined in the manner prescribed in subsection (b) for an interment, but may not be larger than that authorized when the United States provides the grave site. A claim for reimbursement under this subsection may be allowed only if it is presented within two years after the date of death, or the date the person who would have been designated under subsection (c) to direct disposition of the remains, if they had been recovered, receives notification that the member has been reported or determined to be dead under authority of chapter 10 of title 37, whichever is later.

(f) The Secretary concerned may pay the necessary expenses for the presentation of a flag to the person designated to direct the disposition of the remains of a member of the Reserve of an armed force under his jurisdiction who dies under honorable circumstances as determined by the Secretary and who is not covered by section 1481 of this title if, at the time of such member's death, he—

(1) was a member of the Ready Reserve; or

(2) had performed at least twenty years of service as computed under section 12732 of this title and was not entitled to retired pay under section 12731 of this title.

(g) The payment of expenses incident to the recovery, care, and disposition of a decedent covered by section 1481(a)(9) of this title is limited to the payment of expenses described in paragraphs (1) through (5) of subsection (a) and air transportation of the remains from a location outside the United States to a point of entry in the United States. Such air transportation may be provided without reimbursement on a space-available basis in military or military-chartered aircraft. The Secretary concerned shall pay all other expenses authorized to be paid under this subsection only on a reimbursable basis. Amounts reimbursed to the Secretary concerned under this subsection shall be credited to appropriations available, at the time of reimbursement, for the payment of such expenses.

(Aug. 10, 1956, ch. 1041, 70A Stat. 113; Aug. 21, 1958, P.L. 85–716, 72 Stat. 708; Sept. 1, 1970, P.L. 91–397, 84 Stat. 837; Oct. 22, 1970, P.L. 91–487, 84 Stat. 1086; May 28, 1974, P.L. 93–292, 88 Stat. 176; Jan. 8, 1975, P.L. 93–649, 88 Stat. 2361; Nov. 29, 1989, P.L. 101–189, §§ 652(a)(3), 653(a)(6), 1622(c)(4), 103 Stat. 1461, 1462, 1604; Oct. 5, 1994, P.L. 103–337, §§ 652(a)(2), 1671(c)(8), 108 Stat. 2793, 3014; Feb. 10, 1996, P.L. 104–106, § 1501(c)(19), 110 Stat. 499.)

§ 1482a. Expenses incident to death: civilian employees serving with an armed force

(a) PAYMENT OF EXPENSES.—The Secretary concerned may pay the expenses incident to the death of a civilian employee who dies of injuries incurred in connection with the employee's service with an armed force in a contingency operation, or who dies of injuries incurred in connection with a terrorist incident occurring during the employee's service with an armed force, as follows:

(1) Round-trip transportation and prescribed allowances for one person to escort the remains of the employee to the place authorized under section 5742(b)(1) of title 5.

(2) Presentation of a flag of the United States to the next of kin of the employee.

(3) Presentation of a flag of equal size to the flag presented under paragraph (2) to the parents or parent of the employee,

if the person to be presented a flag under paragraph (2) is other than the parent of the employee.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations to implement this section. The Secretary of Transportation shall prescribe regulations to implement this section with regard to civilian employees of the Department of Transportation. Regulations under this subsection shall be uniform to the extent possible and shall provide for the Secretary's consideration of the conditions and circumstances surrounding the death of an employee and the nature of the employee's service with the armed force.

(c) DEFINITIONS.—In this section:

(1) The term "civilian employee" means a person employed by the Federal Government, including a person entitled to basic pay in accordance with the General Schedule provided in section 5332 of title 5 or a similar basic pay schedule of the Federal Government.

(2) The term "contingency operation" includes humanitarian operations, peacekeeping operations, and similar operations.

(3) The term "parent" has the meaning given such term in section 1482(a)(11) of this title.

(4) The term "Secretary concerned" includes the Secretary of Defense with respect to employees of the Department of Defense who are not employees of a military department.

(Added P.L. 103–160, § 368(a), Nov. 30, 1993, 107 Stat. 1633; amended P.L. 103–337, § 1070(a)(8)(A), Oct. 5, 1994, 108 Stat. 2855.)

§ 1483. Prisoners of war and interned enemy aliens

The Secretary concerned may provide for the care and disposition of the remains of prisoners of war and interned enemy aliens who die while in his custody and, incident thereto, pay the necessary expenses of—

(1) notification to the next of kin or other appropriate person;

(2) preparation of the remains for burial, including cremation;

(3) furnishing of clothing;

(4) furnishing of a casket or urn, or both, with outside box;

(5) transportation of the remains to the cemetery or other place selected by the Secretary; and

(6) interment of the remains.

(Aug. 10, 1956, ch. 1041, 70A Stat. 113.)

§ 1484. Pensioners, indigent patients, and persons who die on military reservations

If proper disposition of the remains cannot otherwise be made, the Secretary concerned may provide for the care and disposition of the remains of pensioners and indigent patients who die in hospitals operated by his department and of persons who die on the military reservations of that department and, incident thereto, pay the necessary expenses of—

(1) notification to the next of kin or other appropriate person;

(2) preparation of the remains for burial, including cremation;

(3) furnishing of clothing;

(4) furnishing of a casket or urn, or both, with outside box;

(5) transportation of the remains to a cemetery selected by the Secretary; and

(6) interment of the remains.

(Aug. 10, 1956, ch. 1041, 70A Stat. 114.)

§ 1485. Dependents of members of armed forces

(a) The Secretary concerned may, if a dependent of a member of an armed force dies while the member is on active duty (other than for training), provide for, and pay the necessary expenses of, transporting the remains of the deceased dependent to the home of the decedent or to any other place that the Secretary determines to be the appropriate place of interment.

(b) The Secretary may furnish mortuary services and supplies, on a reimbursable basis, for persons covered by subsection (a), if (1) that action is practicable, and (2) local commercial mortuary services and supplies are not available or the Secretary believes that their cost is prohibitive.

(c) Reimbursement for mortuary services and supplies furnished under this section shall be collected and credited to appropriations available, at the time of reimbursement, for those services and supplies.

(Aug. 10, 1956, ch. 1041, 70A Stat. 114; Aug. 28, 1965, P.L. 89–150, § 1(1), 79 Stat. 585.)

§ 1486. Other citizens of United States

(a) If local commercial mortuary services and supplies are not available, or if he believes that their cost is prohibitive, the Secretary concerned may furnish those services and supplies on a reimbursable basis in the case of any of the following citizens of the United States who die outside the United States:

(1) Any employee of a humanitarian agency accredited to the armed forces, such as the American Red Cross and the United Services Organization.

(2) Any civilian performing a service directly for the Secretary because of employment by an agency under a contract with the Secretary.

(3) Any officer or member of a crew of a merchant vessel operated by or for the United States through the Secretary.

(4) Any person who is on duty with an armed force under the jurisdiction of the Secretary and who is paid from nonappropriated funds.

(5) Upon the specific request of the Department of State, any person not otherwise covered by this section.

(6) Any dependent of a person who is covered by this section, if the dependent is living outside the United States with that person at the time of death.

(b) The Secretary may furnish transportation of the remains of persons covered by this section, on a reimbursable basis, to a port of entry in the United States.

(c) Reimbursement for services, supplies, and transportation furnished under this section shall be collected and credited to

appropriations available, at the time of reimbursement, for those services, supplies, and transportation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 114.)

§ 1487. Temporary interment

Whenever necessary for the temporary interment of remains pending transportation under this chapter to a designated cemetery, the Secretary concerned may acquire, and provide for the maintenance of, grave sites in commercial cemeteries, or he may acquire the right to use such grave sites for burial purposes. If the death occurs outside the United States and a temporary commercial grave site is not available on a reasonable basis, the Secretary may acquire land, or the right to use land, necessary for the temporary interment of the remains under this chapter.

(Aug. 10, 1956, ch. 1041, 70A Stat. 115.)

§ 1488. Removal of remains

If a cemetery on a military reservation, including an installation cemetery, has been or is to be discontinued, the Secretary concerned may provide for the removal of remains from that cemetery to any other cemetery. With respect to any deceased member of an armed force under his jurisdiction whose last service terminated honorably by death or otherwise, the Secretary may also provide for the removal of the remains from a place of temporary interment, or from an abandoned grave or cemetery, to a national cemetery.

(Aug. 10, 1956, ch. 1041, 70A Stat. 115.)

§ 1489. Death gratuity: members and employees dying outside the United States while assigned to intelligence duties

(a) The Secretary of Defense may pay a gratuity to the surviving dependents of any member of the armed forces or of any employee of the Department of Defense—

(1) who—

(A) is assigned to duty with an intelligence component of the Department of Defense and whose identity as such a member or employee is disguised or concealed; or

(B) is within a category of individuals determined by the Secretary of Defense to be engaged in clandestine intelligence activities; and

(2) who after October 14, 1980 dies as a result of injuries (excluding disease) sustained outside the United States and whose death—

(A) resulted from hostile or terrorist activities; or

(B) occurred in connection with an intelligence activity having a substantial element of risk.

(b) Any payment under subsection (a)—

(1) shall be in an amount equal to the amount of the annual basic pay or salary of the member or employee concerned at the time of death;

(2) shall be considered a gift and shall be in lieu of payment of any lesser death gratuity authorized by this chapter or any other Federal law; and

(3) shall be made under the same conditions as apply to payments authorized by section 413 of the Foreign Service Act of 1980 (22 U.S.C. 3973).

(Added P.L. 96–450, § 403(b)(1), Oct. 14, 1980, 94 Stat. 1979; amended P.L. 97–22, § 11(a)(6), July 10, 1981, 95 Stat. 138; P.L. 98–94, § 1268(9), Sept. 24, 1983, 97 Stat. 706; P.L. 99–145, § 1303(a)(12), Nov. 8, 1985, 99 Stat. 739.)

§ 1490. Transportation of remains: certain retired members and dependents who die in military medical facilities

(a) Subject to subsection (b), when a member entitled to retired or retainer pay or equivalent pay, or a dependent of such a member, dies while properly admitted under chapter 55 of this title to a medical facility of the armed forces located in the United States, the Secretary concerned may transport the remains, or pay the cost of transporting the remains, of the decedent to the place of burial of the decedent.

(b)(1) Transportation provided under this section may not be to a place outside the United States or to a place further from the place of death than the decedent's last place of permanent residence, and any amount paid under this section may not exceed the cost of transportation from the place of death to the decedent's last place of permanent residence.

(2) Transportation of the remains of a decedent may not be provided under this section if such transportation is authorized by sections 1481 and 1482 of this title or by chapter 23 of title 38.

(c) In this section:

(1) The term "United States" includes the Commonwealth of Puerto Rico and the territories and possessions of the United States.

(2) The term "dependent" has the meaning given such term in section 1072(2) of this title.

(Added P.L. 98–94, § 1032(a)(1), Sept. 24, 1983, 97 Stat. 671; amended P.L. 100–26, § 7(k)(3), April 21, 1987, 101 Stat. 284; P.L. 102–190, § 626(a), (b), Dec. 5, 1991, 105 Stat. 1379.)

§ 1491. Funeral honors functions at funerals for veterans

(a) AVAILABILITY OF FUNERAL HONORS DETAIL ENSURED.—The Secretary of Defense shall ensure that, upon request, a funeral honors detail is provided for the funeral of any veteran.

(b) COMPOSITION OF FUNERAL HONORS DETAILS.—(1) The Secretary of each military department shall ensure that a funeral honors detail for the funeral of a veteran consists of two or more persons.

(2) At least two members of the funeral honors detail for a veteran's funeral shall be members of the armed forces, at least one of whom shall be a member of the armed force of which the veteran was a member. The remainder of the detail may consist of members of the armed forces or members of veterans organizations or other organizations approved for purposes of this section under regulations prescribed by the Secretary of Defense. Each member of the armed forces in the detail shall wear the uniform of the member's armed force while serving in the detail.

(c) CEREMONY.—A funeral honors detail shall, at a minimum, perform at the funeral a ceremony that includes the folding of a United States flag and presentation of the flag to the veteran's

family and the playing of Taps. Unless a bugler is a member of the detail, the funeral honors detail shall play a recorded version of Taps using audio equipment which the detail shall provide if adequate audio equipment is not otherwise available for use at the funeral.

(d) SUPPORT.—To provide a funeral honors detail under this section, the Secretary of a military department may provide the following:

(1) Transportation, or reimbursement for transportation, and expenses for a person who participates in the funeral honors detail and is not a member of the armed forces or an employee of the United States.

(2) Materiel, equipment, and training for members of a veterans organization or other organization referred to in subsection (b)(2).

(e) WAIVER AUTHORITY.—(1) The Secretary of Defense may waive any requirement provided in or pursuant to this section when the Secretary considers it necessary to do so to meet the requirements of war, national emergency, or a contingency operation or other military requirements. The authority to make such a waiver may not be delegated to an official of a military department other than the Secretary of the military department and may not be delegated within the Office of the Secretary of Defense to an official at a level below Under Secretary of Defense.

(2) Before or promptly after granting a waiver under paragraph (1), the Secretary shall transmit a notification of the waiver to the Committees on Armed Services of the Senate and House of Representatives.

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section. Those regulations shall include the following:

(1) A system for selection of units of the armed forces and other organizations to provide funeral honors details.

(2) Procedures for responding and coordinating responses to requests for funeral honors details.

(3) Procedures for establishing standards and protocol.

(4) Procedures for providing training and ensuring quality of performance.

(g) ANNUAL REPORT.—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 not later than January 31 of each year beginning with 2001 and ending with 2005 on the experience of the Department of Defense under this section. Each such report shall provide data on the number of funerals supported under this section, the cost for that support, shown by manpower and other cost factors, and the number and costs of funerals supported by each participating organization. The data in the report shall be presented in a standard format, regardless of military department or other organization.

(h) VETERAN DEFINED.—In this section, the term "veteran" means a decedent who—

(1) served in the active military, naval, or air service (as defined in section 101(24) of title 38) and who was discharged

or released therefrom under conditions other than dishonorable; or

(2) was a member or former member of the Selected Reserve described in section 2301(f) of title 38.

(Added P.L. 105–261, § 567(b)(1), Oct. 17, 1998, 112 Stat. 2030; amended P.L. 106–65, §§ 578(i)(5), 578(a)(1), (b)–(e), (k)(1), 1067(1), Oct. 5, 1999, 113 Stat. 625–627, 630, 774.)

CHAPTER 76—MISSING PERSONS [1, 2]

Sec.
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§ 1501. System for accounting for missing persons [3]

(a) OFFICE FOR MISSING PERSONNEL.—(1) The Secretary of Defense shall establish within the Office of the Secretary of Defense an office to have responsibility for Department of Defense policy relating to missing persons. Subject to the authority, direction, and control of the Secretary of Defense, the responsibilities of the office shall include—

(A) policy, control, and oversight within the Department of Defense of the entire process for investigation and recovery related to missing persons (including matters related to search, rescue, escape, and evasion); and

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[1] Section 569(a) of the National Defense Authorization Act for Fiscal Year 1996 (P.L. 104–106; 110 Stat. 336) provides:

(a) PURPOSE.—The purpose of this section [enacting chapter 76 of title 10] is to ensure that any member of the Armed Forces (and any Department of Defense civilian employee or contractor employee who serves with or accompanies the Armed Forces in the field under orders) who becomes missing or unaccounted for is ultimately accounted for by the United States and, as a general rule, is not declared dead solely because of the passage of time.

[2] Section 8018 of the Department of Defense Appropriations Act, 2001 (P.L. 106–259; 114 Stat. 678), provides:

SEC. 8018. Funds available in this Act 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.

[3] Section 934 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (P.L. 105–261; 112 Stat. 1866) provides:

SEC. 934. POW/MIA INTELLIGENCE ANALYSIS.

(a) INTELLIGENCE ANALYSIS.—The Director of Central Intelligence, in consultation with the Secretary of Defense, shall provide intelligence analysis on matters concerning prisoners of war and missing persons (as defined in chapter 76 of title 10, United States Code) to all departments and agencies of the Federal Government involved in such matters.

(b) USE OF INTELLIGENCE IN ANALYSIS OF POW/MIA CASES IN DEPARTMENT OF DEFENSE.—The Secretary of Defense shall ensure that the Defense Prisoner of War/Missing Personnel Office of the Department of Defense takes into full account all intelligence regarding matters concerning of prisoners of war and missing persons (as defined in chapter 76 of title 10, United States Code) in analyzing cases involving such persons.

(B) coordination for the Department of Defense with other departments and agencies of the United States on all matters concerning missing persons.

(2) In carrying out the responsibilities of the office established under this subsection, the head of the office shall be responsible for the coordination for such purposes within the Department of Defense among the military departments, the Joint Staff, and the commanders of the combatant commands.

(3) The office shall establish policies, which shall apply uniformly throughout the Department of Defense, for personnel recovery (including search, rescue, escape, and evasion).

(4) The office shall establish procedures to be followed by Department of Defense boards of inquiry, and by officials reviewing the reports of such boards, under this chapter.

(b) UNIFORM DOD PROCEDURES.—(1) The Secretary of Defense shall prescribe procedures, to apply uniformly throughout the Department of Defense, for—

(A) the determination of the status of persons described in subsection (c); and

(B) for the systematic, comprehensive, and timely collection, analysis, review, dissemination, and periodic update of information related to such persons.

(2) Such procedures may provide for the delegation by the Secretary of Defense of any responsibility of the Secretary under this chapter to the Secretary of a military department.

(3) Such procedures shall be prescribed in a single directive applicable to all elements of the Department of Defense.

(4) As part of such procedures, the Secretary may provide for the extension, on a case-by-case basis, of any time limit specified in section 1502, 1503, or 1504 of this title. Any such extension may not be for a period in excess of the period with respect to which the extension is provided. Subsequent extensions may be provided on the same basis.

(c) COVERED PERSONS.—(1) Section 1502 of this title applies in the case of any member of the armed forces on active duty—

(A) who becomes involuntarily absent as a result of a hostile action or under circumstances suggesting that the involuntary absence is a result of a hostile action; and

(B) whose status is undetermined or who is unaccounted for.

(2) Section 1502 of this title applies in the case of any other person who is a citizen of the United States and a civilian officer or employee of the Department of Defense or (subject to paragraph (3)) an employee of a contractor of the Department of Defense—

(A) who serves in direct support of, or accompanies, the armed forces in the field under orders and becomes involuntarily absent as a result of a hostile action or under circumstances suggesting that the involuntary absence is a result of a hostile action; and

(B) whose status is undetermined or who is unaccounted for.

(3) The Secretary of Defense shall determine, with regard to a pending or ongoing military operation, the specific employees, or

groups of employees, of contractors of the Department of Defense to be considered to be covered by this subsection.

(d) PRIMARY NEXT OF KIN.—The individual who is primary next of kin of any person described in subsection (c) may for purposes of this chapter designate another individual to act on behalf of that individual as primary next of kin. The Secretary concerned shall treat an individual so designated as if the individual designated were the primary next of kin for purposes of this chapter. A designation under this subsection may be revoked at any time by the person who made the designation.

(e) TERMINATION OF APPLICABILITY OF PROCEDURES WHEN MISSING PERSON IS ACCOUNTED FOR.—The provisions of this chapter relating to boards of inquiry and to the actions by the Secretary concerned on the reports of those boards shall cease to apply in the case of a missing person upon the person becoming accounted for or otherwise being determined to be in a status other than missing.

(f) SECRETARY CONCERNED.—In this chapter, the term "Secretary concerned" includes, in the case of a civilian officer or employee of the Department of Defense or an employee of a contractor of the Department of Defense, the Secretary of the military department or head of the element of the Department of Defense employing the officer or employee or contracting with the contractor, as the case may be.

(Added P.L. 104–106, § 569(b)(1), Feb. 10, 1996, 110 Stat. 336; amended P.L. 104–201, § 578(a)(1), Sept. 23, 1996, 110 Stat. 2536; P.L. 105–85, § 599(a)(1), Nov. 18, 1997, 111 Stat. 1766, 1767; P.L. 106–65, § 1066(a)(13), Oct. 5, 1999, 113 Stat. 771.)

§ 1502. Missing persons: initial report

(a) PRELIMINARY ASSESSMENT AND RECOMMENDATION BY COMMANDER.—After receiving information that the whereabouts and status of a person described in section 1501(c) of this title is uncertain and that the absence of the person may be involuntary, the commander of the unit, facility, or area to or in which the person is assigned shall make a preliminary assessment of the circumstances. If, as a result of that assessment, the commander concludes that the person is missing, the commander shall—

(1) recommend that the person be placed in a missing status; and

(2) not later than 10 days after receiving such information, transmit a report containing that recommendation to the Secretary concerned in accordance with procedures prescribed under section 1501(b) of this title.

(b) TRANSMISSION OF ADVISORY COPY TO THEATER COMPONENT COMMANDER.—When transmitting a report under subsection (a)(2) recommending that a person be placed in a missing status, the commander transmitting that report shall transmit an advisory copy of the report to the theater component commander with jurisdiction over the missing person.

(c) SAFEGUARDING AND FORWARDING OF RECORDS.—A commander making a preliminary assessment under subsection (a) with respect to a missing person shall (in accordance with procedures prescribed under section 1501 of this title) safeguard and forward for official use any information relating to the whereabouts

and status of the missing person that results from the preliminary assessment or from actions taken to locate the person.

(Added P.L. 104–106, § 569(b)(1), Feb. 10, 1996, 110 Stat. 338; amended P.L. 104–201, § 578(b)(1), Sept. 23, 1996, 110 Stat. 2536; P.L. 105–85, § 599(b)(1), Nov. 18, 1997, 111 Stat. 1768.)

§ 1503. Actions of Secretary concerned; initial board inquiry

(a) DETERMINATION BY SECRETARY.—Upon receiving a recommendation under section 1502(a) of this title that a person be placed in a missing status, the Secretary receiving the recommendation shall review the recommendation and, not later than 10 days after receiving such recommendation, shall appoint a board under this section to conduct an inquiry into the whereabouts and status of the person.

(b) INQUIRIES INVOLVING MORE THAN ONE MISSING PERSON.—If it appears to the Secretary who appoints a board under this section that the absence or missing status of two or more persons is factually related, the Secretary may appoint a single board under this section to conduct the inquiry into the whereabouts and status of all such persons.

(c) COMPOSITION.—(1) A board appointed under this section to inquire into the whereabouts and status of a person shall consist of at least one individual described in paragraph (2) who has experience with and understanding of military operations or activities similar to the operation or activity in which the person disappeared.

(2) An individual referred to in paragraph (1) is the following:

(A) A military officer, in the case of an inquiry with respect to a member of the armed forces.

(B) A civilian, in the case of an inquiry with respect to a civilian employee of the Department of Defense or of a contractor of the Department of Defense.

(3) An individual may be appointed as a member of a board under this section only if the individual has a security clearance that affords the individual access to all information relating to the whereabouts and status of the missing persons covered by the inquiry.

(4) A Secretary appointing a board under this subsection shall, for purposes of providing legal counsel to the board, assign to the board a judge advocate, or appoint to the board an attorney, who has expertise in the law relating to missing persons, the determination of death of such persons, and the rights of family members and dependents of such persons.

(d) DUTIES OF BOARD.—A board appointed to conduct an inquiry into the whereabouts and status of a missing person under this section shall—

(1) collect, develop, and investigate all facts and evidence relating to the disappearance or whereabouts and status of the person;

(2) collect appropriate documentation of the facts and evidence covered by the board's investigation;

(3) analyze the facts and evidence, make findings based on that analysis, and draw conclusions as to the current whereabouts and status of the person; and

(4) with respect to each person covered by the inquiry, recommend to the Secretary who appointed the board that—

(A) the person be placed in a missing status; or

(B) the person be declared to have deserted, to be absent without leave, or (subject to the requirements of section 1507 of this title) to be dead.

(e) BOARD PROCEEDINGS.—During the proceedings of an inquiry under this section, a board shall—

(1) collect, record, and safeguard all facts, documents, statements, photographs, tapes, messages, maps, sketches, reports, and other information (whether classified or unclassified) relating to the whereabouts and status of each person covered by the inquiry;

(2) gather information relating to actions taken to find the person, including any evidence of the whereabouts and status of the person arising from such actions; and

(3) maintain a record of its proceedings.

(f) COUNSEL FOR MISSING PERSON.—(1) The Secretary appointing a board to conduct an inquiry under this section shall appoint counsel to represent each person covered by the inquiry or, in a case covered by subsection (b), one counsel to represent all persons covered by the inquiry. Counsel appointed under this paragraph may be referred to as "missing person's counsel" and represents the interests of the person covered by the inquiry (and not any member of the person's family or other interested parties). The identity of counsel appointed under this paragraph for a missing person shall be made known to the missing person's primary next of kin and any other previously designated person of the person.

(2) To be appointed as a missing person's counsel, a person must—

(A) have the qualifications specified in section 827(b) of this title (article 27(b) of the Uniform Code of Military Justice) for trial counsel or defense counsel detailed for a general court-martial;

(B) have a security clearance that affords the counsel access to all information relating to the whereabouts and status of the person or persons covered by the inquiry; and

(C) have expertise in the law relating to missing persons, the determination of the death of such persons, and the rights of family members and dependents of such persons.

(3) A missing person's counsel—

(A) shall have access to all facts and evidence considered by the board during the proceedings under the inquiry for which the counsel is appointed;

(B) shall observe all official activities of the board during such proceedings;

(C) may question witnesses before the board; and

(D) shall monitor the deliberations of the board.

(4) A missing person's counsel shall assist the board in ensuring that all appropriate information concerning the case is collected, logged, filed, and safeguarded. The primary next of kin of a missing person and any other previously designated person of the missing person shall have the right to submit information to the

missing person's counsel relative to the disappearance or status of the missing person.

(5) A missing person's counsel shall review the report of the board under subsection (h) and submit to the Secretary concerned who appointed the board an independent review of that report. That review shall be made an official part of the record of the board.

(g) ACCESS TO PROCEEDINGS.—The proceedings of a board during an inquiry under this section shall be closed to the public (including, with respect to the person covered by the inquiry, the primary next of kin, other members of the immediate family, and any other previously designated person of the person).

(h) REPORT.—(1) A board appointed under this section shall submit to the Secretary who appointed the board a report on the inquiry carried out by the board. The report shall include—

(A) a discussion of the facts and evidence considered by the board in the inquiry;

(B) the recommendation of the board under subsection (d) with respect to each person covered by the report; and

(C) disclosure of whether classified documents and information were reviewed by the board or were otherwise used by the board in forming recommendations under subparagraph (B).

(2) A board shall submit a report under this subsection with respect to the inquiry carried out by the board not later than 30 days after the date of the appointment of the board to carry out the inquiry. The report may include a classified annex.

(3) The Secretary of Defense shall prescribe procedures for the release of a report submitted under this subsection with respect to a missing person. Such procedures shall provide that the report may not be made public (except as provided for in subsection (j)) until one year after the date on which the report is submitted.

(i) DETERMINATION BY SECRETARY.—(1) Not later than 30 days after receiving a report from a board under subsection (h), the Secretary receiving the report shall review the report.

(2) In reviewing a report under paragraph (1), the Secretary shall determine whether or not the report is complete and free of administrative error. If the Secretary determines that the report is incomplete, or that the report is not free of administrative error, the Secretary may return the report to the board for further action on the report by the board.

(3) Upon a determination by the Secretary that a report reviewed under this subsection is complete and free of administrative error, the Secretary shall make a determination concerning the status of each person covered by the report, including whether the person shall—

(A) be declared to be missing;

(B) be declared to have deserted;

(C) be declared to be absent without leave; or

(D) be declared to be dead.

(j) REPORT TO FAMILY MEMBERS AND OTHER INTERESTED PERSONS.—Not later than 30 days after the date on which the Secretary concerned makes a determination of the status of a person

under subsection (i), the Secretary shall take reasonable actions to—

(1) provide to the primary next of kin, the other members of the immediate family, and any other previously designated person of the person—

(A) an unclassified summary of the unit commander's report with respect to the person under section 1502(a) of this title; and

(B) the report of the board (including the names of the members of the board) under subsection (h); and

(2) inform each individual referred to in paragraph (1) that the United States will conduct a subsequent inquiry into the whereabouts and status of the person on or about one year after the date of the first official notice of the disappearance of the person, unless information becomes available sooner that may result in a change in status of the person.

(k) TREATMENT OF DETERMINATION.—Any determination of the status of a missing person under subsection (i) shall be treated as the determination of the status of the person by all departments and agencies of the United States.

(Added P.L. 104–106, § 569(b)(1), Feb. 10, 1996, 110 Stat. 338; amended P.L. 104–201, § 578(a)(2), (b)(2), Sept. 23, 1996, 110 Stat. 2536; P.L. 105–85, § 599(a)(2), (d), Nov. 18, 1997, 111 Stat. 1767, 1769.)

§ 1504. Subsequent board of inquiry

(a) ADDITIONAL BOARD.—If information that may result in a change of status of a person covered by a determination under section 1503(i) of this title becomes available within one year after the date of the transmission of a report with respect to the person under section 1502(a)(2) of this title, the Secretary concerned shall appoint a board under this section to conduct an inquiry into the information.

(b) DATE OF APPOINTMENT.—The Secretary concerned shall appoint a board under this section to conduct an inquiry into the whereabouts and status of a missing person on or about one year after the date of the transmission of a report concerning the person under section 1502(a)(2) of this title.

(c) COMBINED INQUIRIES.—If it appears to the Secretary concerned that the absence or status of two or more persons is factually related, the Secretary may appoint one board under this section to conduct the inquiry into the whereabouts and status of such persons.

(d) COMPOSITION.—(1) A board appointed under this section shall be composed of at least three members as follows:

(A) In the case of a board that will inquire into the whereabouts and status of one or more members of the armed forces (and no civilians described in subparagraph (B)), the board shall be composed of officers having the grade of major or lieutenant commander or above.

(B) In the case of a board that will inquire into the whereabouts and status of one or more civilian employees of the Department of Defense or contractors of the Department of Defense (and no members of the armed forces), the board shall be composed of—

(i) not less than three employees of the Department of Defense whose rate of annual pay is equal to or greater than the rate of annual pay payable for grade GS–13 of the General Schedule under section 5332 of title 5; and

(ii) such members of the armed forces as the Secretary considers advisable.

(C) In the case of a board that will inquire into the whereabouts and status of both one or more members of the armed forces and one or more civilians described in subparagraph (B)—

(i) the board shall include at least one officer described in subparagraph (A) and at least one employee of the Department of Defense described in subparagraph (B)(i); and

(ii) the ratio of such officers to such employees on the board shall be roughly proportional to the ratio of the number of members of the armed forces who are subjects of the board's inquiry to the number of civilians who are subjects of the board's inquiry.

(2) The Secretary concerned shall designate one member of a board appointed under this section as president of the board. The president of the board shall have a security clearance that affords the president access to all information relating to the whereabouts and status of each person covered by the inquiry.

(3) One member of each board appointed under this subsection shall be an individual who—

(A) has an occupational specialty similar to that of one or more of the persons covered by the inquiry; and

(B) has an understanding of and expertise in the type of official activities that one or more such persons were engaged in at the time such person or persons disappeared.

(4) The Secretary who appoints a board under this subsection shall, for purposes of providing legal counsel to the board, assign to the board a judge advocate, or appoint to the board an attorney, with the same qualifications as specified in section 1503(c)(4) of this title.

(e) DUTIES OF BOARD.—A board appointed under this section to conduct an inquiry into the whereabouts and status of a person shall—

(1) review the reports with respect to the person transmitted under section 1502(a)(2) of this title and submitted under section 1503(h) of this title;

(2) collect and evaluate any document, fact, or other evidence with respect to the whereabouts and status of the person that has become available since the determination of the status of the person under section 1503 of this title;

(3) draw conclusions as to the whereabouts and status of the person;

(4) determine on the basis of the activities under paragraphs (1) and (2) whether the status of the person should be continued or changed; and

(5) submit to the Secretary concerned a report describing the findings and conclusions of the board, together with a rec-

ommendation for a determination by the Secretary concerning the whereabouts and status of the person.

(f) COUNSEL FOR MISSING PERSONS.—(1) When the Secretary concerned appoints a board to conduct an inquiry under this section, the Secretary shall appoint counsel to represent each person covered by the inquiry. The identity of counsel appointed under this paragraph for a missing person shall be made known to the missing person's primary next of kin and any other previously designated person of the person.

(2) A person appointed as counsel under this subsection shall meet the qualifications and have the duties set forth in section 1503(f) of this title for a missing person's counsel appointed under that section.

(3) The review of the report of a board on an inquiry that is submitted by such counsel shall be made an official part of the record of the board with respect to the inquiry.

(g) ATTENDANCE OF FAMILY MEMBERS AND CERTAIN OTHER INTERESTED PERSONS AT PROCEEDINGS.—(1) With respect to any person covered by an inquiry under this section, the primary next of kin, other members of the immediate family, and any other previously designated person of the person may attend the proceedings of the board during the inquiry.

(2) The Secretary concerned shall take reasonable actions to notify each individual referred to in paragraph (1) of the opportunity to attend the proceedings of a board. Such notice shall be provided not less than 60 days before the first meeting of the board.

(3) An individual who receives notice under paragraph (2) shall notify the Secretary of the intent, if any, of that individual to attend the proceedings of the board not later than 21 days after the date on which the individual receives the notice.

(4) Each individual who notifies the Secretary under paragraph (3) of the individual's intent to attend the proceedings of the board—

(A) in the case of an individual who is the primary next of kin or the previously designated person, may attend the proceedings of the board with private counsel;

(B) shall have access to the personnel file of the missing person, to unclassified reports, if any, of the board appointed under section 1503 of this title to conduct the inquiry into the whereabouts and status of the person, and to any other unclassified information or documents relating to the whereabouts and status of the person;

(C) shall be afforded the opportunity to present information at the proceedings of the board that such individual considers to be relevant to those proceedings; and

(D) subject to paragraph (5), shall be given the opportunity to submit in writing an objection to any recommendation of the board under subsection (i) as to the status of the missing person.

(5)(A) Individuals who wish to file objections under paragraph (4)(D) to any recommendation of the board shall—

(i) submit a letter of intent to the president of the board not later than 15 days after the date on which the recommendations are made; and

(ii) submit to the president of the board the objections in writing not later than 30 days after the date on which the recommendations are made.

(B) The president of a board shall include any objections to a recommendation of the board that are submitted to the president of the board under subparagraph (A) in the report of the board containing the recommendation under subsection (i).

(6) An individual referred to in paragraph (1) who attends the proceedings of a board under this subsection shall not be entitled to reimbursement by the United States for any costs (including travel, lodging, meals, local transportation, legal fees, transcription costs, witness expenses, and other expenses) incurred by that individual in attending such proceedings.

(h) AVAILABILITY OF INFORMATION TO BOARDS.—(1) In conducting proceedings in an inquiry under this section, a board may secure directly from any department or agency of the United States any information that the board considers necessary in order to conduct the proceedings.

(2) Upon written request from the president of a board, the head of a department or agency of the United States shall release information covered by the request to the board. In releasing such information, the head of the department or agency shall—

(A) declassify to an appropriate degree classified information; or

(B) release the information in a manner not requiring the removal of markings indicating the classified nature of the information.

(3)(A) If a request for information under paragraph (2) covers classified information that cannot be declassified, or if the classification markings cannot be removed before release from the information covered by the request, or if the material cannot be summarized in a manner that prevents the release of classified information, the classified information shall be made available only to the president of the board making the request and the counsel for the missing person appointed under subsection (f).

(B) The president of a board shall close to persons who do not have appropriate security clearances the proceeding of the board at which classified information is discussed. Participants at a proceeding of a board at which classified information is discussed shall comply with all applicable laws and regulations relating to the disclosure of classified information. The Secretary concerned shall assist the president of a board in ensuring that classified information is not compromised through board proceedings.

(i) RECOMMENDATION ON STATUS.—(1) Upon completion of an inquiry under this section, a board shall make a recommendation as to the current whereabouts and status of each missing person covered by the inquiry.

(2) A board may not recommend under paragraph (1) that a person be declared dead unless in making the recommendation the board complies with section 1507 of this title.

(j) REPORT.—A board appointed under this section shall submit to the Secretary concerned a report on the inquiry carried out by the board, together with the evidence considered by the board during the inquiry. The report may include a classified annex.

(k) ACTIONS BY SECRETARY CONCERNED.—(1) Not later than 30 days after the receipt of a report from a board under subsection (j), the Secretary shall review—

(A) the report;

(B) the review of the report submitted to the Secretary under subsection (f)(3) by the counsel for each person covered by the report; and

(C) the objections, if any, to the report submitted to the president of the board under subsection (g)(5).

(2) In reviewing a report under paragraph (1) (including the objections described in subparagraph (C) of that paragraph), the Secretary concerned shall determine whether or not the report is complete and free of administrative error. If the Secretary determines that the report is incomplete, or that the report is not free of administrative error, the Secretary may return the report to the board for further action on the report by the board.

(3) Upon a determination by the Secretary that a report reviewed under this subsection is complete and free of administrative error, the Secretary shall make a determination concerning the status of each person covered by the report.

(l) REPORT TO FAMILY MEMBERS AND OTHER INTERESTED PERSONS.—Not later than 60 days after the date on which the Secretary concerned makes a determination with respect to a missing person under subsection (k), the Secretary shall—

(1) provide the report reviewed by the Secretary in making the determination to the primary next of kin, the other members of the immediate family, and any other previously designated person of the person; and

(2) in the case of a person who continues to be in a missing status, inform each individual referred to in paragraph (1) that the United States will conduct a further investigation into the whereabouts and status of the person as specified in section 1505 of this title.

(m) TREATMENT OF DETERMINATION.—Any determination of the status of a missing person under subsection (k) shall supersede the determination of the status of the person under section 1503 of this title and shall be treated as the determination of the status of the person by all departments and agencies of the United States.

(Added P.L. 104–106, § 569(b)(1), Feb. 10, 1996, 110 Stat. 341; amended P.L. 104–201, § 578(a)(3), Sept. 23, 1996, 110 Stat. 2536; P.L. 105–85, §§ 599(a)(3), (d)(1), 1073(a)(30), Nov. 18, 1997, 111 Stat. 1767, 1768–1769, 1902.)

§ 1505. Further review

(a) SUBSEQUENT REVIEW.—The Secretary concerned shall conduct subsequent inquiries into the whereabouts and status of any person determined by the Secretary under section 1504 of this title to be in a missing status.

(b) FREQUENCY OF SUBSEQUENT REVIEWS.—The Secretary concerned shall conduct inquiries into the whereabouts and status of a person under subsection (a) upon receipt of information that may

result in a change of status of the person. The Secretary concerned shall appoint a board to conduct such inquiries.

(c) ACTION UPON DISCOVERY OR RECEIPT OF INFORMATION.—(1) Whenever any United States intelligence agency or other element of the Government finds or receives information that may be related to a missing person, the information shall promptly be forwarded to the office established under section 1501 of this title.

(2) Upon receipt of information under paragraph (1), the head of the office established under section 1501 of this title shall as expeditiously as possible ensure that the information is added to the appropriate case file for that missing person and notify (A) the designated missing person's counsel for that person, and (B) the primary next of kin and any previously designated person for the missing person of the existence of that information.

(3) The head of the office established under section 1501 of this title, with the advice of the missing person's counsel notified under paragraph (2), shall determine whether the information is significant enough to require a board review under this section.

(d) CONDUCT OF PROCEEDINGS.—If it is determined that such a board should be appointed, the appointment of, and activities before, a board appointed under this section shall be governed by the provisions of section 1504 of this title with respect to a board appointed under that section.

(Added P.L. 104–106, § 569(b)(1), Feb. 10, 1996, 110 Stat. 345; amended P.L. 104–201, § 578(c), Sept. 23, 1996, 110 Stat. 2536.)

§ 1506. Personnel files

(a) INFORMATION IN FILES.—Except as provided in subsections (b), (c), and (d), the Secretary concerned shall, to the maximum extent practicable, ensure that the personnel file of a missing person contains all information in the possession of the United States relating to the disappearance and whereabouts and status of the person.

(b) CLASSIFIED INFORMATION.—(1) The Secretary concerned may withhold classified information from a personnel file under this section. If the Secretary concerned withholds classified information from a personnel file, the Secretary shall ensure that the file contains the following:

(A) A notice that the withheld information exists.

(B) A notice of the date of the most recent review of the classification of the withheld information.

(2) If classified information withheld under this subsection refers to one or more unnamed missing persons, the Secretary shall ensure that notice of that withheld information, and notice of the date of the most recent review of the classification of that withheld information, is made reasonably accessible to the primary next of kin, members of the immediate family, and the previously designated person.

(c) PROTECTION OF PRIVACY.—The Secretary concerned shall maintain personnel files under this section, and shall permit disclosure of or access to such files, in accordance with the provisions of section 552a of title 5 and with other applicable laws and regulations pertaining to the privacy of the persons covered by the files.

(d) PRIVILEGED INFORMATION.—(1) The Secretary concerned shall withhold from personnel files under this section, as privileged information, debriefing reports provided by missing persons returned to United States control which are obtained under a promise of confidentiality made for the purpose of ensuring the fullest possible disclosure of information.

(2) If a debriefing report contains non-derogatory information about the status and whereabouts of a missing person other than the source of the debriefing report or about unnamed missing persons, the Secretary concerned shall prepare an extract of the non-derogatory information. That extract, following a review by the source of the debriefing report, shall be placed in the personnel file of each missing person named in the debriefing report in such a manner as to protect the identity of the source providing the information. Any information contained in the extract of the debriefing report that pertains to unnamed missing persons shall be made reasonably accessible to the primary next of kin, members of the immediate family, and the previously designated person.

(3) Whenever the Secretary concerned withholds a debriefing report, or part of a debriefing report, from a personnel file under this subsection, the Secretary shall ensure that the file contains a notice that withheld information exists.

(e) AVAILABILITY OF INFORMATION.—The Secretary concerned shall, upon request, make available the contents of the personnel file of a missing person to the primary next of kin, the other members of the immediate family, or any other previously designated person of the person.

(f) NONDISCLOSURE OF CERTAIN INFORMATION.—A record of the content of a debriefing of a missing person returned to United States control during the period beginning on July 8, 1959, and ending on February 10, 1996, that was conducted by an official of the United States authorized to conduct the debriefing is privileged information and, notwithstanding sections 552 and 552a of title 5, may not be disclosed, in whole or in part, under either such section. However, this subsection does not limit the responsibility of the Secretary concerned under paragraphs (2) and (3) of subsection (d) to place extracts of non-derogatory information, or a notice of the existence of such information, in the personnel file of a missing person.

(Added P.L. 104–106, § 569(b)(1), Feb. 10, 1996, 110 Stat. 346; amended P.L. 104–201, § 578(d), Sept. 23, 1996, 110 Stat. 2537; P.L. 105–85, § 599(f), (g), Nov. 18, 1997, 111 Stat. 1770; P.L. 106–65, § 575, Oct. 5, 1999, 113 Stat. 624.)

§ 1507. Recommendation of status of death

(a) REQUIREMENTS RELATING TO RECOMMENDATION.—A board appointed under section 1503, 1504, or 1505 of this title may not recommend that a person be declared dead unless—

(1) credible evidence exists to suggest that the person is dead;

(2) the United States possesses no credible evidence that suggests that the person is alive; and

(3) representatives of the United States—

(A) have made a complete search of the area where the person was last seen (unless, after making a good faith effort to obtain access to such area, such representatives are not granted such access); and

(B) have examined the records of the government or entity having control over the area where the person was last seen (unless, after making a good faith effort to obtain access to such records, such representatives are not granted such access).

(b) SUBMITTAL OF INFORMATION ON DEATH.—If a board appointed under section 1503, 1504, or 1505 of this title makes a recommendation that a missing person be declared dead, the board shall include in the report of the board with respect to the person under that section the following:

(1) A detailed description of the location where the death occurred.

(2) A statement of the date on which the death occurred.

(3) A description of the location of the body, if recovered.

(4) If the body has been recovered and is not identifiable through visual means, a certification by a forensic pathologist that the body recovered is that of the missing person. In determining whether to make such a certification, the forensic pathologist shall consider, as determined necessary by the Secretary of the military department concerned, additional evidence and information provided by appropriate specialists in forensic medicine or other appropriate medical sciences.

(Added P.L. 104–106, § 569(b)(1), Feb. 10, 1996, 110 Stat. 347; amended P.L. 104–201, § 578(e), Sept. 23, 1996, 110 Stat. 2537; P.L. 105–85, § 599(c), Nov. 18, 1997, 111 Stat. 1768.)

§ 1508. Judicial review

(a) RIGHT OF REVIEW.—A person who is the primary next of kin (or the previously designated person) of a person who is the subject of a finding described in subsection (b) may obtain judicial review in a United States district court of that finding, but only on the basis of a claim that there is information that could affect the status of the missing person's case that was not adequately considered during the administrative review process under this chapter. Any such review shall be as provided in section 706 of title 5.

(b) FINDINGS FOR WHICH JUDICIAL REVIEW MAY BE SOUGHT.—Subsection (a) applies to the following findings:

(1) A finding by a board appointed under section 1504 or 1505 of this title that a missing person is dead.

(2) A finding by a board appointed under section 1509 of this title that confirms that a missing person formerly declared dead is in fact dead.

(c) SUBSEQUENT REVIEW.—Appeals from a decision of the district court shall be taken to the appropriate United States court of appeals and to the Supreme Court as provided by law.

(Added P.L. 104–106, § 569(b)(1), Feb. 10, 1996, 110 Stat. 348.)

§ 1509. Preenactment cases

(a) REVIEW OF STATUS.—(1) If new information (as defined in paragraph (2)) is found or received that may be related to one or

more unaccounted for persons described in subsection (b) (whether or not such information specifically relates (or may specifically relate) to any particular such unaccounted for person), that information shall be provided to the Secretary of Defense. Upon receipt of such information, the Secretary shall ensure that the information is treated under paragraphs (2) and (3) of section 1505(c) of this title and under section 1505(d) of this title in the same manner as information received under paragraph (1) of section 1505(c) of this title. For purposes of the applicability of other provisions of this chapter in such a case, each such unaccounted for person to whom the new information may be related shall be considered to be a missing person.

(2) For purposes of this subsection, new information is information that is credible and that—

(A) is found or received after November 18, 1997, by a United States intelligence agency, by a Department of Defense agency, or by a person specified in section 1504(g) of this title; or

(B) is identified after November 18, 1997, in records of the United States as information that could be relevant to the case of one or more unaccounted for persons described in subsection (b).

(b) CASES ELIGIBLE FOR REVIEW.—The cases eligible for review under this section are the following:

(1) With respect to the Korean conflict, any unaccounted for person who was classified as a prisoner of war or as missing in action during that conflict and who (A) was known to be or suspected to be alive at the end of that conflict, or (B) was classified as missing in action and whose capture was possible.

(2) With respect to the Cold War, any unaccounted for person who was engaged in intelligence operations (such as aerial "ferret" reconnaissance missions over and around the Soviet Union and China) during the Cold War.

(3) With respect to the Indochina war era, any unaccounted for person who was classified as a prisoner of war or as missing in action during the Indochina conflict.

(c) DEFINITIONS.—In this section:

(1) The term "Korean conflict" means the period beginning on June 27, 1950, and ending on January 31, 1955.

(2) The term "Cold War" means the period beginning on September 2, 1945, and ending on August 21, 1991.

(3) The term "Indochina war era" means the period beginning on July 8, 1959, and ending on May 15, 1975.

(d) ESTABLISHMENT OF PERSONNEL FILES FOR KOREAN CONFLICT CASES.—The Secretary of Defense shall ensure that a personnel file is established for each unaccounted for person who is described in subsection (b)(1) if the Secretary possesses information relevant to that person's status. In the case of a person described in subsection (b)(1) for whom a personnel file does not exist, the Secretary shall create a personnel file for such person upon receipt of new information as provided in subsection (a). Each such file shall be handled in accordance with, and subject to the provisions

of, section 1506 of this title in the same manner as applies to the file of a missing person.

(Added P.L. 104–106, § 569(b)(1), Feb. 10, 1996, 110 Stat. 348; amended P.L. 104–201, § 578(f)(1), (2)(A), Sept. 23, 1996, 110 Stat. 2537; P.L. 105–85, § 599(e), Nov. 18, 1997, 111 Stat. 1769; P.L. 106–65, § 1066(a)(14), Oct. 5, 1999, 113 Stat. 771.)

§ 1510. Applicability to Coast Guard

(a) DESIGNATED OFFICER TO HAVE RESPONSIBILITY.—The Secretary of Transportation shall designate an officer of the Department of Transportation to have responsibility within the Department of Transportation for matters relating to missing persons who are members of the Coast Guard.

(b) PROCEDURES.—The Secretary of Transportation shall prescribe procedures for the determination of the status of persons described in section 1501(c) of this title who are members of the Coast Guard and for the collection, analysis, review, and update of information on such persons. To the maximum extent practicable, the procedures prescribed under this section shall be similar to the procedures prescribed by the Secretary of Defense under section 1501(b) of this title.

(Added P.L. 104–106, § 569(b)(1), Feb. 10, 1996, 110 Stat. 349.)

§ 1511. Return alive of person declared missing or dead

(a) PAY AND ALLOWANCES.—Any person (except for a person subsequently determined to have been absent without leave or a deserter) in a missing status or declared dead under subchapter VII of chapter 55 of title 5 or chapter 10 of title 37 or by a board appointed under this chapter who is found alive and returned to the control of the United States shall be paid for the full time of the absence of the person while given that status or declared dead under the law and regulations relating to the pay and allowances of persons returning from a missing status.

(b) EFFECT ON GRATUITIES PAID AS A RESULT OF STATUS.—Subsection (a) shall not be interpreted to invalidate or otherwise affect the receipt by any person of a death gratuity or other payment from the United States on behalf of a person referred to in subsection (a) before the date of the enactment of this chapter.

(Added P.L. 104–106, § 569(b)(1), Feb. 10, 1996, 110 Stat. 349.)

§ 1512. Effect on State law

(a) NONPREEMPTION OF STATE AUTHORITY.—Nothing in this chapter shall be construed to invalidate or limit the power of any State court or administrative entity, or the power of any court or administrative entity of any political subdivision thereof, to find or declare a person dead for purposes of such State or political subdivision.

(b) STATE DEFINED.—In this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(Added P.L. 104–106, § 569(b)(1), Feb. 10, 1996, 110 Stat. 350.)

§ 1513. Definitions

In this chapter:

(1) The term "missing person" means—

(A) a member of the armed forces on active duty who is in a missing status; or

(B) a civilian employee of the Department of Defense or an employee of a contractor of the Department of Defense who serves in direct support of, or accompanies, the armed forces in the field under orders and who is in a missing status.

Such term includes an unaccounted for person described in section 1509(b) of this title who is required by section 1509(a)(1) of this title to be considered a missing person.

(2) The term "missing status" means the status of a missing person who is determined to be absent in a category of any of the following:

(A) Missing.

(B) Missing in action.

(C) Interned in a foreign country.

(D) Captured.

(E) Beleaguered.

(F) Besieged.

(G) Detained in a foreign country against that person's will.

(3) The term "accounted for", with respect to a person in a missing status, means that—

(A) the person is returned to United States control alive;

(B) the remains of the person are recovered and, if not identifiable through visual means as those of the missing person, are identified as those of the missing person by a practitioner of an appropriate forensic science; or

(C) credible evidence exists to support another determination of the person's status.

(4) The term "primary next of kin", in the case of a missing person, means the individual authorized to direct disposition of the remains of the person under section 1482(c) of this title.

(5) The term "member of the immediate family", in the case of a missing person, means the following:

(A) The spouse of the person.

(B) A natural child, adopted child, stepchild, or illegitimate child (if acknowledged by the person or parenthood has been established by a court of competent jurisdiction) of the person, except that if such child has not attained the age of 18 years, the term means a surviving parent or legal guardian of such child.

(C) A biological parent of the person, unless legal custody of the person by the parent has been previously terminated by reason of a court decree or otherwise under law and not restored.

(D) A brother or sister of the person, if such brother or sister has attained the age of 18 years.

(E) Any other blood relative or adoptive relative of the person, if such relative was given sole legal custody of the person by a court decree or otherwise under law before the person attained the age of 18 years and such custody was not subsequently terminated before that time.

(6) The term "previously designated person", in the case of a missing person, means an individual designated by the person under section 655 of this title for purposes of this chapter.

(7) The term "classified information" means any information the unauthorized disclosure of which (as determined under applicable law and regulations) could reasonably be expected to damage the national security.

(8) The term "theater component commander" means, with respect to any of the combatant commands, an officer of any of the armed forces who (A) is commander of all forces of that armed force assigned to that combatant command, and (B) is directly subordinate to the commander of the combatant command.

(Added P.L. 104–106, § 569(b)(1), Feb. 10, 1996, 110 Stat. 336; amended P.L. 104–201, § 578(a)(4), (b)(3), Sept. 23, 1996, 110 Stat. 2536; P.L. 105–85, § 599(a)(4), (b)(2), Nov. 18, 1997, 111 Stat. 1768; P.L. 106–65, § 1066(a)(15), Oct. 5, 1999, 113 Stat. 771.)

CHAPTER 77—POSTHUMOUS COMMISSIONS AND WARRANTS

Sec.
1521. Posthumous commissions.
1522. Posthumous warrants.
1523. Posthumous commissions and warrants: effect on pay and allowances.
1524. Posthumous commissions and warrants: determination of date of death.

§ 1521. Posthumous commissions

(a) The President may issue, or have issued, an appropriate commission in the name of a member of the armed forces who, after September 8, 1939—

(1) was appointed to a commissioned grade but was unable to accept the appointment because of death in line of duty;

(2) successfully completed the course at an officers' training school and was recommended for appointment to a commissioned grade by the commanding officer or officer in charge of the school but was unable to accept the appointment because of death in line of duty; or

(3) was officially recommended for appointment or promotion to a commissioned grade but was unable to accept the promotion or appointment because of death in line of duty.

(b) A commission issued under subsection (a) shall issue as of the date of the appointment, recommendation, or official recommendation, as the case may be, and the member's name shall be carried on the records of the military or executive department concerned as if he had served in the grade, and branch if any, in which posthumously commissioned, from the date of the appointment, recommendation, or official recommendation to the date of his death.

(Aug. 10, 1956, ch. 1041, 70A Stat. 115; Oct. 30, 2000, P.L. 106–398, § 1[505], 114 Stat. 1654, 1654A–102.)

§ 1522. Posthumous warrants

(a) The Secretary concerned may issue, or have issued, an appropriate warrant in the name of a member of the armed forces who, after September 8, 1939, was officially recommended for appointment or promotion to a grade other than a commissioned grade but was unable to accept the appointment or promotion because of death in line of duty.

(b) A warrant issued under subsection (a) shall issue as of the date of the recommendation, and the member's name shall be carried on the records of the military or executive department concerned as if he had served in the grade to which posthumously appointed or promoted from the date of the recommendation to the date of his death.

(Aug. 10, 1956, ch. 1041, 70A Stat. 116.)

§ 1523. Posthumous commissions and warrants: effect on pay and allowances

No person is entitled to any bonus, gratuity, pay, or allowance because of a posthumous commission or warrant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 116.)

§ 1524. Posthumous commissions and warrants: determination of date of death

For the purposes of sections 1521 and 1522 of this title, in any case where the date of death is established or determined under section 551–558 of title 37, the date of death is the date the Secretary concerned receives evidence that the person is dead, or the date the finding of death is made under section 555 of title 37.

(Added P.L. 89–718, § 12(a)(1), Nov. 2, 1966, 80 Stat. 1117.)

CHAPTER 79—CORRECTION OF MILITARY RECORDS [1]

Sec.
1551. Correction of name after separation from service under an assumed name.
1552. Correction of military records: claims incident thereto.
1553. Review of discharge or dismissal.
1554. Review of retirement or separation without pay for physical disability.
1555. Professional staff.
1556. Ex parte communications prohibited.
1557. Timeliness standards for disposition of applications before Corrections Boards.

§ 1551. Correction of name after separation from service under an assumed name

The Secretary of the military department concerned shall issue a certificate of discharge or an order of acceptance of resignation in the true name of any person who was separated from the Army, Navy, Air Force, or Marine Corps honorably or under honorable conditions after serving under an assumed name during a war with another nation or people, upon application by, or on behalf of, that person, and upon proof of his identity. However, a certificate or order may not be issued under this section if the name was assumed to conceal a crime or to avoid its consequences.

(Aug. 10, 1956, ch. 1041, 70A Stat. 116.)

§ 1552. Correction of military records: claims incident thereto

(a)(1) The Secretary of a military department may correct any military record of the Secretary's department when the Secretary

[1] Section 541 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (P.L. 105–261; 112 Stat, 2019) provides:

SEC. 541. PERSONNEL FREEZE.

(a) LIMITATION.—During fiscal years 1999, 2000, and 2001, the Secretary of a military department may not carry out any reduction in the number of military and civilian personnel assigned to duty with the service review agency for that military department below the baseline number for that agency until—

(1) the Secretary submits to Congress a report that describes the reduction proposed to be made, provides the Secretary's rationale for that reduction, and specifies the number of such personnel that would be assigned to duty with that agency after the reduction; and

(2) a period of 90 days has elapsed after the date on which such report is submitted.

(b) BASELINE NUMBER.—The baseline number for a service review agency under this section is—

(1) for purposes of the first report with respect to a service review agency under this section, the number of military and civilian personnel assigned to duty with that agency as of October 1, 1997; and

(2) for purposes of any subsequent report with respect to a service review agency under this section, the number of such personnel specified in the most recent report with respect to that agency under this section.

(c) SERVICE REVIEW AGENCY DEFINED.—In this section, the term "service review agency" means—

(1) with respect to the Department of the Army, the Army Review Boards Agency;

(2) with respect to the Department of the Navy, the Board for Correction of Naval Records; and

(3) with respect to the Department of the Air Force, the Air Force Review Boards Agency.

considers it necessary to correct an error or remove an injustice. Except as provided in paragraph (2), such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that military department. The Secretary of Transportation may in the same manner correct any military record of the Coast Guard.

(2) The Secretary concerned is not required to act through a board in the case of the correction of a military record announcing a decision that a person is not eligible to enlist (or reenlist) or is not accepted for enlistment (or reenlistment) or announcing the promotion and appointment of an enlisted member to an initial or higher grade or the decision not to promote an enlisted member to a higher grade. Such a correction may be made only if the correction is favorable to the person concerned.

(3) Corrections under this section shall be made under procedures established by the Secretary concerned. In the case of the Secretary of a military department, those procedures must be approved by the Secretary of Defense.

(4) Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.

(b) No correction may be made under subsection (a)(1) unless the claimant or his heir or legal representative files a request for the correction within three years after he discovers the error or injustice. However, a board established under subsection (a)(1) may excuse a failure to file within three years after discovery if it finds it to be in the interest of justice.

(c) The Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, or on account of his or another's service as a civilian employee. If the claimant is dead, the money shall be paid, upon demand, to his legal representative. However, if no demand for payment is made by a legal representative, the money shall be paid—

(1) to the surviving spouse, heir, or beneficiaries, in the order prescribed by the law applicable to that kind of payment;

(2) if there is no such law covering order of payment, in the order set forth in section 2771 of this title; or

(3) as otherwise prescribed by the law applicable to that kind of payment.

A claimant's acceptance of a settlement under this section fully satisfies the claim concerned. This section does not authorize the payment of any claim compensated by private law before October 25, 1951.

(d) Applicable current appropriations are available to continue the pay, allowances, compensation, emoluments, and other pecuniary benefits of any person who was paid under subsection (c), and who, because of the correction of his military record, is entitled to those benefits, but for not longer than one year after the date when his record is corrected under this section if he is not reenlisted in, or appointed or reappointed to, the grade to which those

payments relate. Without regard to qualifications for reenlistment, or appointment or reappointment, the Secretary concerned may reenlist a person in, or appoint or reappoint him to, the grade to which payments under this section relate.

(e) No payment may be made under this section for a benefit to which the claimant might later become entitled under the laws and regulations administered by the Secretary of Veterans Affairs.

(f) With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)), action under subsection (a) may extend only to—

(1) correction of a record to reflect actions taken by reviewing authorities under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)); or

(2) action on the sentence of a court-martial for purposes of clemency.

(g) In this section, the term "military record" means a document or other record that pertains to (1) an individual member or former member of the armed forces, or (2) at the discretion of the Secretary of the military department concerned, any other military matter affecting a member or former member of the armed forces, an employee or former employee of that military department, or a dependent or current or former spouse of any such person. Such term does not include records pertaining to civilian employment matters (such as matters covered by title 5 and chapters 81, 83, 87, 108, 373, 605, 607, 643, and 873 of this title).

(Aug. 10, 1956, ch. 1041, 70A Stat. 116; June 29, 1960, P.L. 86–533, § 1(4), 74 Stat. 246; Dec. 12, 1980, P.L. 96–513, § 511(60), 94 Stat. 2925; Dec. 6, 1983, P.L. 98–209, § 11(a), 97 Stat. 1407; Sept. 29, 1988, P.L. 100–456, § 1233(a), 102 Stat. 2057; Nov. 29, 1989, P.L. 101–189, §§ 514, 1621(a)(2), 103 Stat. 1441, 1603; Oct. 23, 1992, P.L. 102–484, § 1052(19), 106 Stat. 2500; P.L. 105–261, § 545(a), (b), Oct. 17, 1998, 112 Stat. 2022.)

§ 1553. Review of discharge or dismissal

(a) The Secretary concerned shall, after consulting the Secretary of Veterans Affairs, establish a board of review, consisting of five members, to review the discharge or dismissal (other than a discharge or dismissal by sentence of a general court-martial) of any former member of an armed force under the jurisdiction of his department upon its own motion or upon the request of the former member or, if he is dead, his surviving spouse, next of kin, or legal representative. A motion or request for review must be made within 15 years after the date of the discharge or dismissal. With respect to a discharge or dismissal adjudged by a court-martial case tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)), action under this subsection may extend only to a change in the discharge or dismissal or issuance of a new discharge for purposes of clemency.

(b) A board established under this section may, subject to review by the Secretary concerned, change a discharge or dismissal, or issue a new discharge, to reflect its findings.

(c) A review by a board established under this section shall be based on the records of the armed forces concerned and such other

evidence as may be presented to the board. A witness may present evidence to the board in person or by affidavit. A person who requests a review under this section may appear before the board in person or by counsel or an accredited representative of an organization recognized by the Secretary of Veterans Affairs under chapter 59 of title 38.

(Added P.L. 85–857, § 13(v)(2), Sept. 2, 1958, 72 Stat. 1267; amended P.L. 87–651, § 110(a), Sept. 7, 1962, 76 Stat. 509; P.L. 98–209, Dec. 6, 1983, § 11(b), 97 Stat. 1407; P.L. 101–189, § 1621(a)(2), Nov. 29, 1989, 103 Stat. 1603.)

§ 1554. Review of retirement or separation without pay for physical disability

(a) The Secretary concerned shall from time to time establish boards of review, each consisting of five commissioned officers, two of whom shall be selected from officers of the Army Medical Corps, officers of the Navy Medical Corps, Air Force officers designated as medical officers, or officers of the Public Health Service, as the case may be, to review, upon the request of an officer retired or released from active duty without pay for physical disability, the findings and decisions of the retiring board, board of medical survey, or disposition board in his case. A request for review must be made within 15 years after the date of the retirement or separation.

(b) A board established under this section has the same powers as the board whose findings and decision are being reviewed. The findings of the board shall be sent to the Secretary concerned, who shall submit them to the President for approval.

(c) A review by a board established under this section shall be based upon the records of the armed forces concerned and such other evidence as may be presented to the board. A witness may present evidence to the board in person or by affidavit. A person who requests a review under this section may appear before the board in person or by counsel or an accredited representative of an organization recognized by the Secretary of Veterans Affairs under chapter 59 of title 38.

(Added P.L. 85–857, § 13(v)(2), Sept. 2, 1958, 72 Stat. 1267; amended P.L. 87–651, § 110(a), Sept. 7, 1962, 76 Stat. 510; P.L. 101–189, § 1621(a)(2), Nov. 29, 1989, 103 Stat. 1603.)

§ 1555. Professional staff

(a) The Secretary of each military department shall assign to the staff of the service review agency of that military department at least one attorney and at least one physician. Such assignments shall be made on a permanent, full-time basis and may be made from members of the armed forces or civilian employees.

(b) Personnel assigned pursuant to subsection (a)—

(1) shall work under the supervision of the director or executive director (as the case may be) of the service review agency; and

(2) shall be assigned duties as advisers to the director or executive director or other staff members on legal and medical matters, respectively, that are being considered by the agency.

(c) In this section, the term "service review agency" means—

(1) with respect to the Department of the Army, the Army Review Boards Agency;

(2) with respect to the Department of the Navy, the Navy Council of Personnel Boards and the Board for Correction of Naval Records; and

(3) with respect to the Department of the Air Force, the Air Force Review Boards Agency.

(Added P.L. 105–261, § 542(a), Oct. 17, 1998, 112 Stat. 2020; amended P.L. 106–65, § 582, Oct. 5, 1999, 113 Stat. 634.)

§ 1556. Ex parte communications prohibited

(a) IN GENERAL.—The Secretary of each military department shall ensure that an applicant seeking corrective action by the Army Review Boards Agency, the Air Force Review Boards Agency, or the Board for Correction of Naval Records, as the case may be, is provided a copy of all correspondence and communications (including summaries of verbal communications) to or from the agency or board, or a member of the staff of the agency or board, with an entity or person outside the agency or board that pertain directly to the applicant's case or have a material effect on the applicant's case.

(b) EXCEPTIONS.—Subsection (a) does not apply to the following:

(1) Classified information.

(2) Information the release of which is otherwise prohibited by law or regulation.

(3) Any record previously provided to the applicant or known to be possessed by the applicant.

(4) Any correspondence that is purely administrative in nature.

(5) Any military record that is (or may be) provided to the applicant by the Secretary of the military department or other source.

(Added P.L. 105–261, § 543(a), Oct. 17, 1998, 112 Stat. 2020.)

§ 1557. Timeliness standards for disposition of applications before Corrections Boards

(a) TEN-MONTH CLEARANCE PERCENTAGE.—Of the applications received by a Corrections Board during a period specified in the following table, the percentage on which final action by the Corrections Board must be completed within 10 months of receipt (other than for those applications considered suitable for administrative correction) is as follows:

For applications received during—	The percentage on which final Correction Board action must be completed within 10 months of receipt is—
the period of fiscal years 2001 and 2002	50
the period of fiscal years 2003 and 2004	60
the period of fiscal years 2005, 2006, and 2007	70
the period of fiscal years 2008, 2009, and 2010	80
the period of any fiscal year after fiscal year 2010	90.

(b) CLEARANCE DEADLINE FOR ALL APPLICATIONS.—Effective October 1, 2002, final action by a Corrections Board on all applications received by the Corrections Board (other than those applications considered suitable for administrative correction) shall be completed within 18 months of receipt.

(c) WAIVER AUTHORITY.—The Secretary of the military department concerned may exclude an individual application from the timeliness standards prescribed in subsections (a) and (b) if the Secretary determines that the application warrants a longer period of consideration. The authority of the Secretary of a military department under this subsection may not be delegated.

(d) FAILURE TO MEET TIMELINESS STANDARDS NOT TO AFFECT ANY INDIVIDUAL APPLICATION.—Failure of a Corrections Board to meet the applicable timeliness standard for any period of time under subsection (a) or (b) does not confer any presumption or advantage with respect to consideration by the board of any application.

(e) REPORTS ON FAILURE TO MEET TIMELINESS STANDARDS.—The Secretary of the military department concerned shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report not later than June 1 following any fiscal year during which the Corrections Board of that Secretary's military department was unable to meet the applicable timeliness standard for that fiscal year under subsections (a) and (b). The report shall specify the reasons why the standard could not be met and the corrective actions initiated to ensure compliance in the future. The report shall also specify the number of waivers granted under subsection (c) during that fiscal year.

(f) CORRECTIONS BOARD DEFINED.—In this section, the term "Corrections Board" means—

(1) with respect to the Department of the Army, the Army Board for Correction of Military Records;

(2) with respect to the Department of the Navy, the Board for Correction of Naval Records; and

(3) with respect to the Department of the Air Force, the Air Force Board for Correction of Military Records.

(Added P.L. 105–261, § 544, Oct. 17, 1998, 112 Stat. 2021; amended P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

CHAPTER 80—MISCELLANEOUS INVESTIGATION REQUIREMENTS AND OTHER DUTIES

Sec.
1561. Complaints of sexual harassment: investigation by commanding officers.
1562. Database on domestic violence incidents.
1563. Consideration of proposals for posthumous and honorary promotions and appointments: procedures for review and recommendation.
1564. Security clearance investigations.
1565. DNA identification information: collection from certain offenders; use.

§ 1561. Complaints of sexual harassment: investigation by commanding officers

(a) ACTION ON COMPLAINTS ALLEGING SEXUAL HARASSMENT.—A commanding officer or officer in charge of a unit, vessel, facility, or area of the Army, Navy, Air Force, or Marine Corps who receives from a member of the command or a civilian employee under the supervision of the officer a complaint alleging sexual harassment by a member of the armed forces or a civilian employee of the Department of Defense shall carry out an investigation of the matter in accordance with this section.

(b) COMMENCEMENT OF INVESTIGATION.—To the extent practicable, a commanding officer or officer in charge receiving such a complaint shall, within 72 hours after receipt of the complaint—

(1) forward the complaint or a detailed description of the allegation to the next superior officer in the chain of command who is authorized to convene a general court-martial;

(2) commence, or cause the commencement of, an investigation of the complaint; and

(3) advise the complainant of the commencement of the investigation.

(c) DURATION OF INVESTIGATION.—To the extent practicable, a commanding officer or officer in charge receiving such a complaint shall ensure that the investigation of the complaint is completed not later than 14 days after the date on which the investigation is commenced.

(d) REPORT ON INVESTIGATION.—To the extent practicable, a commanding officer or officer in charge receiving such a complaint shall—

(1) submit a final report on the results of the investigation, including any action taken as a result of the investigation, to the next superior officer referred to in subsection (b)(1) within 20 days after the date on which the investigation is commenced; or

(2) submit a report on the progress made in completing the investigation to the next superior officer referred to in subsection (b)(1) within 20 days after the date on which the investigation is commenced and every 14 days thereafter until the investigation is completed and, upon completion of the investigation, then submit a final report on the results of the inves-

tigation, including any action taken as a result of the investigation, to that next superior officer.

(e) SEXUAL HARASSMENT DEFINED.—In this section, the term "sexual harassment" means any of the following:

(1) Conduct (constituting a form of sex discrimination) that—

(A) involves unwelcome sexual advances, requests for sexual favors, and deliberate or repeated offensive comments or gestures of a sexual nature when—

(i) submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career;

(ii) submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or

(iii) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment; and

(B) is so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the work environment as hostile or offensive.

(2) Any use or condonation, by any person in a supervisory or command position, of any form of sexual behavior to control, influence, or affect the career, pay, or job of a member of the armed forces or a civilian employee of the Department of Defense.

(3) Any deliberate or repeated unwelcome verbal comment or gesture of a sexual nature in the workplace by any member of the armed forces or civilian employee of the Department of Defense.

(Added P.L. 105–85, § 591(a)(1), Nov. 18, 1997, 111 Stat. 1760.)

§ 1562. Database on domestic violence incidents

(a) DATABASE ON DOMESTIC VIOLENCE INCIDENT.—The Secretary of Defense shall establish a central database of information on the incidents of domestic violence involving members of the armed forces.

(b) REPORTING OF INFORMATION FOR THE DATABASE.—The Secretary shall require that the Secretaries of the military departments maintain and report annually to the administrator of the database established under subsection (a) any information received on the following matters:

(1) Each domestic violence incident reported to a commander, a law enforcement authority of the armed forces, or a family advocacy program of the Department of Defense.

(2) The number of those incidents that involve evidence determined sufficient for supporting disciplinary action and, for each such incident, a description of the substantiated allegation and the action taken by command authorities in the incident.

(3) The number of those incidents that involve evidence determined insufficient for supporting disciplinary action and for each such case, a description of the allegation.

(Added P.L. 106–65, § 594(a), Oct. 5, 1999, 113 Stat. 643.)

§ 1563. Consideration of proposals for posthumous and honorary promotions and appointments: procedures for review and recommendation

(a) REVIEW BY SECRETARY CONCERNED.—Upon request of a Member of Congress, the Secretary concerned shall review a proposal for the posthumous or honorary promotion or appointment of a member or former member of the armed forces, or any other person considered qualified, that is not otherwise authorized by law. Based upon such review, the Secretary shall make a determination as to the merits of approving the posthumous or honorary promotion or appointment and the other determinations necessary to comply with subsection (b).

(b) NOTICE OF RESULTS OF REVIEW.—Upon making a determination under subsection (a) as to the merits of approving the posthumous or honorary promotion or appointment, the Secretary concerned shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives and to the requesting Member of Congress notice in writing of one of the following:

(1) The posthumous or honorary promotion or appointment does not warrant approval on the merits.

(2) The posthumous or honorary promotion or appointment warrants approval and authorization by law for the promotion or appointment is recommended.

(3) The posthumous or honorary promotion or appointment warrants approval on the merits and has been recommended to the President as an exception to policy.

(4) The posthumous or honorary promotion or appointment warrants approval on the merits and authorization by law for the promotion or appointment is required but is not recommended.

A notice under paragraph (1) or (4) shall be accompanied by a statement of the reasons for the decision of the Secretary.

(c) DEFINITION.—In this section, the term "Member of Congress" means—

(1) a Senator; or

(2) a Representative in, or a Delegate or Resident Commissioner to, Congress.

(Added P.L. 106–398, § 1[542(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–115.)

§ 1564. Security clearance investigations

(a) EXPEDITED PROCESS.—The Secretary of Defense shall prescribe a process for expediting the completion of the background investigations necessary for granting security clearances for Department of Defense personnel and Department of Defense contractor personnel who are engaged in sensitive duties that are critical to the national security.

(b) REQUIRED FEATURES.—The process developed under subsection (a) shall provide for the following:

(1) Quantification of the requirements for background investigations necessary for grants of security clearances for Department of Defense personnel and Department of Defense contractor personnel.

(2) Categorization of personnel on the basis of the degree of sensitivity of their duties and the extent to which those duties are critical to the national security.

(3) Prioritization of the processing of background investigations on the basis of the categories of personnel determined under paragraph (2).

(c) ANNUAL REVIEW.—The Secretary shall conduct an annual review of the process prescribed under subsection (a) and shall revise that process as determined necessary in relation to ongoing Department of Defense missions.

(d) CONSULTATION REQUIREMENT.—The Secretary shall consult with the Secretaries of the military departments and the heads of Defense Agencies in carrying out this section.

(e) SENSITIVE DUTIES.—For the purposes of this section, it is not necessary for the performance of duties to involve classified activities or classified matters in order for the duties to be considered sensitive and critical to the national security.

(Added P.L. 106–398, § 1[1072(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–276.)

§ 1565. DNA identification information: collection from certain offenders; use

(a)[1] COLLECTION OF DNA SAMPLES.—(1) The Secretary concerned shall collect a DNA sample from each member of the armed forces under the Secretary's jurisdiction who is, or has been, convicted of a qualifying military offense (as determined under subsection (d)).

(2) For each member described in paragraph (1), if the Combined DNA Index System (in this section referred to as "CODIS") of the Federal Bureau of Investigation contains a DNA analysis with respect to that member, or if a DNA sample has been or is to be collected from that member under section 3(a) of the DNA Analysis Backlog Elimination Act of 2000, the Secretary concerned may (but need not) collect a DNA sample from that member.

(3) The Secretary concerned may enter into agreements with other Federal agencies, units of State or local government, or private entities to provide for the collection of samples described in paragraph (1).

(b) ANALYSIS AND USE OF SAMPLES.—The Secretary concerned shall furnish each DNA sample collected under subsection (a) to the Secretary of Defense. The Secretary of Defense shall—

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[1] Subsections (b) and (c) of section 5 of the DNA Analysis Backlog Elimination Act of 2000 (P.L. 106–546; 114 Stat. 2733) provide:

(b) INITIAL DETERMINATION OF QUALIFYING MILITARY OFFENSES.—The initial determination of qualifying military offenses under section 1565(d) of title 10, United States Code, as added by subsection (a)(1), shall be made not later than [March 18, 2001].

(c) COMMENCEMENT OF COLLECTION.—Collection of DNA samples under section 1565(a) of such title, as added by subsection (a)(1), shall, subject to the availability of appropriations, commence not later than the date that is 60 days after the date of the initial determination referred to in subsection (b).

(1) carry out a DNA analysis on each such DNA sample in a manner that complies with the requirements for inclusion of that analysis in CODIS; and

(2) furnish the results of each such analysis to the Director of the Federal Bureau of Investigation for inclusion in CODIS.

(c) DEFINITIONS.—In this section:

(1) The term "DNA sample" means a tissue, fluid, or other bodily sample of an individual on which a DNA analysis can be carried out.

(2) The term "DNA analysis" means analysis of the deoxyribonucleic acid (DNA) identification information in a bodily sample.

(d) QUALIFYING MILITARY OFFENSES.—(1) Subject to paragraph (2), the Secretary of Defense, in consultation with the Attorney General, shall determine those felony or sexual offenses under the Uniform Code of Military Justice that shall be treated for purposes of this section as qualifying military offenses.[2]

(2) An offense under the Uniform Code of Military Justice that is comparable to a qualifying Federal offense (as determined under section 3(d) of the DNA Analysis Backlog Elimination Act of 2000), as determined by the Secretary in consultation with the Attorney General, shall be treated for purposes of this section as a qualifying military offense.

(e) EXPUNGEMENT.—(1) The Secretary of Defense shall promptly expunge, from the index described in subsection (a) of section 210304 of the Violent Crime Control and Law Enforcement Act of 1994, the DNA analysis of a person included in the index on the basis of a qualifying military offense if the Secretary receives, for each conviction of the person of a qualifying offense, a certified copy of a final court order establishing that such conviction has been overturned.

(2) For purposes of paragraph (1), the term "qualifying offense" means any of the following offenses:

(A) A qualifying Federal offense, as determined under section 3 of the DNA Analysis Backlog Elimination Act of 2000.

(B) A qualifying District of Columbia offense, as determined under section 4 of the DNA Analysis Backlog Elimination Act of 2000.

(C) A qualifying military offense.

(3) For purposes of paragraph (1), a court order is not "final" if time remains for an appeal or application for discretionary review with respect to the order.

(f) REGULATIONS.—This section shall be carried out under regulations prescribed by the Secretary of Defense, in consultation with the Secretary of Transportation and the Attorney General. Those regulations shall apply, to the extent practicable, uniformly throughout the armed forces.

(Added P.L. 106–546, § 5(a), Dec. 19, 2000, 114 Stat. 2731.)

[2] See footnote 2 above.

CHAPTER 81—CIVILIAN EMPLOYEES

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1580. Emergency essential employees: designation.
1580a. Emergency essential employees: notification of required participation in anthrax vaccine immunization program.
1581. Foreign National Employees Separation Pay Account.
1582. Assistive technology, assistive technology devices, and assistive technology services.
1583. Employment of certain persons without pay.
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[1590. Repealed.]
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1596. Foreign language proficiency: special pay for proficiency beneficial for intelligence interests.
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1597. Civilian positions: guidelines for reductions.
1598. Assistance to terminated employees to obtain certification and employment as teachers or employment as teachers' aides.
[1599. Transferred.]
1599a. Financial assistance to certain employees in acquisition of critical skills.
1599b. Employees abroad: travel expenses; health care.
[1599c. Repealed.]

§ 1580. Emergency essential employees: designation

(a) CRITERIA FOR DESIGNATION.—The Secretary of Defense or the Secretary of the military department concerned may designate as an emergency essential employee any employee of the Department of Defense, whether permanent or temporary, the duties of whose position meet all of the following criteria:

(1) It is the duty of the employee to provide immediate and continuing support for combat operations or to support maintenance and repair of combat essential systems of the armed forces.

(2) It is necessary for the employee to perform that duty in a combat zone after the evacuation of nonessential personnel, including any dependents of members of the armed forces, from the zone in connection with a war, a national

emergency declared by Congress or the President, or the commencement of combat operations of the armed forces in the zone.

(3) It is impracticable to convert the employee's position to a position authorized to be filled by a member of the armed forces because of a necessity for that duty to be performed without interruption.

(b) ELIGIBILITY OF EMPLOYEES OF NONAPPROPRIATED FUND INSTRUMENTALITIES.—A nonappropriated fund instrumentality employee is eligible for designation as an emergency essential employee under subsection (a).

(c) DEFINITIONS.—In this section:

(1) The term "combat zone" has the meaning given that term in section 112(c)(2) of the Internal Revenue Code of 1986.

(2) The term "nonappropriated fund instrumentality employee" has the meaning given that term in section 1587(a)(1) of this title.

(Added P.L. 106–65, § 1103(b)(1), Oct. 5, 1999, 113 Stat. 776.)

§ 1580a. Emergency essential employees: notification of required participation in anthrax vaccine immunization program

The Secretary of Defense shall—

(1) prescribe regulations [1] for the purpose of ensuring that any civilian employee of the Department of Defense who is determined to be an emergency essential employee and who is required to participate in the anthrax vaccine immunization program is notified of the requirement to participate in the program and the consequences of a decision not to participate; and

(2) ensure that any individual who is being considered for a position as such an employee is notified of the obligation to participate in the program before being offered employment in such position.

(Added P.L. 106–398, § 1[751(c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–194.)

§ 1581. Foreign National Employees Separation Pay Account

(a) ESTABLISHMENT AND PURPOSE.—There is established on the books of the Treasury an account to be known as the "Foreign National Employees Separation Pay Account, Defense". The account shall be used for the accumulation of funds to finance obligations of the United States for separation pay for foreign nationals referred to in subsection (e).

(b) DEPOSITS INTO ACCOUNT.—(1) The Secretary of the Treasury shall deposit into the account all amounts that were obligated by the Secretary of Defense before December 5, 1991, and that remain unexpended for separation pay for foreign nationals referred to in subsection (e).

(2) The Secretary of Defense shall deposit into the account from applicable appropriations all amounts obligated on or after

[1] Not later than July 1, 2001, the Secretary of Defense shall prescribe the regulations regarding emergency essential employees of the Department of Defense required under subsection (a), pursuant to section 751(e)(4) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654, 1654A–195).

December 5, 1991, for separation pay for foreign nationals referred to in subsection (e).

(c) PAYMENTS FROM ACCOUNT.—Amounts in the account shall remain available for expenditure in accordance with the purpose for which obligated until expended.

(d) DEOBLIGATED FUNDS.—Any amount in the account that is deobligated shall be available for a period of two years from the date of deobligation for recording, adjusting, and liquidating amounts properly chargeable to the liability of the United States for which the obligation was made. Any such deobligated amount remaining at the end of such two-year period shall be canceled.

(e) EMPLOYEES COVERED.—This section applies only with respect to separation pay of foreign nationals employed by the Department of Defense, and foreign nationals employed by a foreign government for the benefit of the Department of Defense, under any of the following agreements that provide for payment of separation pay:

(1) A contract.

(2) A treaty.

(3) A memorandum of understanding with a foreign nation.

(Added P.L. 102–190, § 1003(a), Dec. 5, 1991, 105 Stat. 1456; amended P.L. 102–484, § 1052(20), Oct. 23, 1992, 106 Stat. 2500; P.L. 103–337, § 346, Oct. 5, 1994, 108 Stat. 2724.)

§ 1582. Assistive technology, assistive technology devices, and assistive technology services

(a) AUTHORITY.—The Secretary of Defense may provide assistive technology, assistive technology devices, and assistive technology services to the following:

(1) Department of Defense employees with disabilities.

(2) Organizations within the Department that have requirements to make programs or facilities accessible to, and usable by, persons with disabilities.

(3) Any other department or agency of the Federal Government, upon the request of the head of that department or agency, for its employees with disabilities or for satisfying a requirement to make its programs or facilities accessible to, and usable by, persons with disabilities.

(b) DEFINITIONS.—In this section, the terms "assistive technology", "assistive technology device", "assistive technology service", and "disability" have the meanings given those terms in section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002).

(Added P.L. 106–398, § 1[1102(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–311.)

§ 1583. Employment of certain persons without pay

The Secretary of Defense may employ, without pay, not more than 10 persons of outstanding experience and ability. However, a person so employed may be allowed transportation, and not more than $15 a day instead of subsistence, while away from his home or regular place of business pursuant to employment under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 118; Nov. 2, 1966, P.L. 89–718, § 14, 80 Stat. 1117; Oct. 12, 1982, P.L. 97–295, § 1(20)(A), (B), 96 Stat. 1290.)

§ 1584. Employment of non-citizens [2]

Laws prohibiting the employment of, or payment of pay or expenses to, a person who is not a citizen of the United States do not apply to personnel of the Department of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 118; Oct. 12, 1982, P.L. 97–295, § 1(20)(A), 96 Stat. 1290; Nov. 5, 1990, P.L. 101–510, §§ 1481(d)(1), (2), 1482(b), 104 Stat. 1706, 1709; Feb. 10, 1996, P.L. 104–106, § 1062(b), 110 Stat. 444.)

§ 1585. Carrying of firearms

Under regulations to be prescribed by the Secretary of Defense, civilian officers and employees of the Department of Defense may carry firearms or other appropriate weapons while assigned investigative duties or such other duties as the Secretary may prescribe.

(Added P.L. 85–577, § 1(1), July 31, 1958, 72 Stat. 455.)

§ 1585a. Special agents of the Defense Criminal Investigative Service: authority to execute warrants and make arrests

(a) AUTHORITY.—The Secretary of Defense may authorize any DCIS special agent described in subsection (b)—

(1) to execute and serve any warrant or other process issued under the authority of the United States; and

(2) to make arrests without a warrant—

(A) for any offense against the United States committed in the presence of that agent; and

(B) for any felony cognizable under the laws of the United States if the agent has probable cause to believe that the person to be arrested has committed or is committing the felony.

(b) AGENTS TO HAVE AUTHORITY.—Subsection (a) applies to any DCIS special agent whose duties include conducting, supervising, or coordinating investigations of criminal activity in programs and operations of the Department of Defense.

(c) GUIDELINES ON EXERCISE OF AUTHORITY.—The authority provided under subsection (a) shall be exercised in accordance with guidelines prescribed by the Inspector General of the Department of Defense and approved by the Attorney General and any other applicable guidelines prescribed by the Secretary of Defense or the Attorney General.

(d) DCIS SPECIAL AGENT DEFINED.—In this section, the term "DCIS special agent" means an employee of the Department of De-

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[2] Section 8002 of the Department of Defense Appropriations Act, 2001 (P.L. 106–259; 114 Stat. 674), provides:

SEC. 8002. During the current fiscal year [fiscal year 2001], provisions of law prohibiting the payment of compensation to, or employment of, any person not a citizen of the United States shall not apply to personnel of the Department of Defense: *Provided*, That salary increases granted to direct and indirect hire foreign national employees of the Department of Defense funded by this Act shall not be at a rate in excess of the percentage increase authorized by law for civilian employees of the Department of Defense whose pay is computed under the provisions of section 5332 of title 5, United States Code, or at a rate in excess of the percentage increase provided by the appropriate host nation to its own employees, whichever is higher: *Provided further*, That this section shall not apply to Department of Defense foreign service national employees serving at United States diplomatic missions whose pay is set by the Department of State under the Foreign Service Act of 1980: *Provided further*, That the limitations of this provision shall not apply to foreign national employees of the Department of Defense in the Republic of Turkey.

fense who is a special agent of the Defense Criminal Investigative Service (or any successor to that service).

(Added P.L. 105–85, § 1071(a), Nov. 18, 1997, 111 Stat. 1897.)

§ 1586. Rotation of career-conditional and career employees assigned to duty outside the United States

(a) In order to advance the programs and activities of the Defense Establishment, it is hereby declared to be the policy of the Congress to facilitate the interchange of civilian employees of the Defense Establishment between posts of duty in the United States and posts of duty outside the United States through the establishment and operation of programs for the rotation, to the extent consistent with the missions of the Defense Establishment and sound principles of administration, of such employees who are assigned to duty outside the United States.

(b) Notwithstanding any other provision of law, the Secretary of Defense with respect to civilian employees of the Department of Defense other than employees of a military department, and the Secretary of each military department with respect to civilian employees of such military department, may, under such regulations as each such Secretary may prescribe with respect to the employees concerned and in accordance with the policy and other provisions of this section, establish and operate programs of rotation which provide for the granting of the right to return to a position in the United States to each civilian employee in the department concerned—

(1) who, while serving under a career-conditional or career appointment in the competitive civil service, is assigned at the request of the department concerned to duty outside the United States,

(2) who satisfactorily completes such duty, and

(3) who applies, not later than 30 days after his completion of such duty, for the right to return to a position in the United States as provided by subsection (c).

The Secretary of the department concerned may provide by regulation for the waiver of the provisions of paragraphs (2) and (3), or of either of such paragraphs, in those cases in which the application of such paragraphs, or either of them, would be against equity and good conscience or against the public interest.

(c) The right to return to a position in the United States granted under this section shall be without reduction in the seniority, status, and tenure held by the employee immediately before his assignment to duty outside the United States and the employee shall be placed, not later than 30 days after the date on which he is determined to be immediately available to exercise such right in accordance with the following provisions:

(1) The employee shall be placed in the position which he held immediately before his assignment to duty outside the United States, if such position exists.

(2) If such position does not exist, or with his consent, the employee shall be placed in a vacant existing position, or in a new continuing position, for which he is qualified, available for the purposes of this section in the department concerned, in the same geographical area as, with rights and benefits equal

to the rights and benefits of, and in a grade equal to the grade of, the position which he held immediately before his assignment to duty outside the United States.

(3) If the positions described in paragraph (1) and paragraph (2) do not exist, the employee shall be placed in an additional position which shall be established by the department concerned for a period not in excess of 90 days in order to carry out the purposes of this section. Such additional position shall be in the same geographical area as, with rights and benefits not less than the rights and benefits of, and in a grade not lower than the grade of, the position held by the employee immediately before his assignment to duty outside the United States.

(4) If, within 90 days after his placement in a position under paragraph (3) a vacant existing position or new continuing position, for which the employee is qualified, is available for the purposes of this section in the department concerned, in the same geographical area as, with rights and benefits equal to the rights and benefits of, and in a grade equal to the grade of, the position which he held immediately before his assignment to duty outside the United States, the employee shall be placed in such vacant existing position or new continuing position.

(5) If, within the 90-day period referred to in paragraphs (3) and (4), the employee cannot be placed in a position under paragraph (4), he shall be reassigned or separated under the regulations prescribed by the Office of Personnel Management to carry out sections 3501–3503 of title 5.

(6) If there is a termination of or material change in the activity in which the former position of the employee (referred to in paragraph (1)) was located, he shall be placed, in the manner provided by paragraphs (2), (3), and (4), as applicable, in a position in the department concerned in a geographical area other than the geographical area in which such former position was located.

(d) Each employee who is placed in a position under paragraph (1), (2), (3), (4), or (6) of subsection (c) shall be paid at a rate of basic pay which is not less than the rate of basic pay to which he would have been entitled if he had not been assigned to duty outside the United States.

(e)(1) Each employee who is displaced from a position by reason of the exercise of a return right under subsection (c)(1) shall be placed, as of the date of such displacement, without reduction in seniority, status, and tenure, in a vacant existing position or new continuing position, for which he is qualified, available in the department concerned, in the same geographical area as, with rights and benefits equal to the rights and benefits of, in a grade equal to the grade of, and at a rate of basic pay not less than the last rate of basic pay which is not less than the last rate of basic pay to which he was entitled while in, the position from which he is displaced.

(2) If the employee cannot be placed in a position under paragraph (1), he shall be reassigned to a position other than the position from which he is displaced, or separated, under the regulations

prescribed by the Office of Personnel Management to carry out sections 3501–3503 of title 5.

(f) The President may, upon his determination that such action is necessary in the national interest, declare that, for such period as he may specify, an assignment of an employee to duty in Alaska or Hawaii shall be held and considered, for the purposes of this section, to be an assignment to duty outside the United States.

(g) In this section—

(1) The term "rotation" means the assignment of civilian employees referred to in subsection (b) to duty outside the United States and the return of such employees to duty within the United States.

(2) The term "grade" means, as applicable, a grade of the General Schedule as prescribed in section 5104 of title 5 or a grade or level of the appropriate prevailing rate schedule.

(h) The Secretary of Defense may, under such regulations as he may prescribe, make the provisions of subsections (a) through (g) applicable to civilian employees of the Department of Defense who are residents of Guam, the Virgin Islands, or the Commonwealth of Puerto Rico at the time of their employment by the Department of Defense in the same manner as if the references in such subsections to the United States (when used in a geographical sense) were references to Guam, the Virgin Islands, or the Commonwealth of Puerto Rico, as the case may be.

(Added P.L. 86–585, § 1, July 5, 1960, 74 Stat. 325; amended P.L. 89–718, § 15, Nov. 2, 1966, 80 Stat. 1117; P.L. 90–83, § 3(3), Sept. 11, 1967, 81 Stat. 220; P.L. 96–513, § 511(61), Dec. 12, 1980, 94 Stat. 2925; P.L. 96–600, § 1, Dec. 24, 1980, 94 Stat. 3493; P.L. 97–295, § 1(20)(A), Oct. 12, 1982, 96 Stat. 1290; P.L. 98–525, § 1405(29), Oct. 19, 1984, 98 Stat. 2623; P.L. 101–189, § 1622(e)(4), Nov. 29, 1989, 103 Stat. 1605.)

§ 1587. Employees of nonappropriated fund instrumentalities: reprisals

(a) In this section:

(1) The term "nonappropriated fund instrumentality employee" means a civilian employee who is paid from nonappropriated funds of 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. Such term includes a civilian employee of a support organization within the Department of Defense or a military department, such as the Defense Finance and Accounting Service, who is paid from nonappropriated funds on account of the nature of the employee's duties.

(2) The term "civilian employee" has the meaning given the term "employee" by section 2105(a) of title 5.

(3) The term "personnel action", with respect to a nonappropriated fund instrumentality employee (or an applicant for a position as such an employee), means—

(A) an appointment;

(B) a promotion;

(C) a disciplinary or corrective action;

(D) a detail, transfer, or reassignment;

(E) a reinstatement, restoration, or reemployment;

(F) a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, or other action described in this paragraph; and

(G) any other significant change in duties or responsibilities that is inconsistent with the employee's salary or grade level.

(b) Any civilian employee or member of the armed forces who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority, take or fail to take a personnel action with respect to any nonappropriated fund instrumentality employee (or any applicant for a position as such an employee) as a reprisal for—

(1) a disclosure of information by such an employee or applicant which the employee or applicant reasonably believes evidences—

(A) a violation of any law, rule, or regulation; or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

if such disclosure is not specificially prohibited by law and if the information is not specifically required by or pursuant to executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(2) a disclosure by such an employee or applicant to any civilian employee or member of the armed forces designated by law or by the Secretary of Defense to receive disclosures described in clause (1), of information which the employee or applicant reasonably believes evidences—

(A) a violation of any law, rule, or regulation; or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(c) This section does not apply to an employee in a position excluded from the coverage of this section by the President based upon a determination by the President that the exclusion is necessary and warranted by conditions of good administration.

(d) The Secretary of Defense shall be responsible for the prevention of actions prohibited by subsection (b) and for the correction of any such actions that are taken. The authority of the Secretary to correct such actions may not be delegated to the Secretary of a military department or to the Assistant Secretary of Defense for Manpower and Logistics

(e) The Secretary of Defense, after consultation with the Director of the Office of Personnel Management and the Special Counsel of the Merit Systems Protection Board, shall prescribe regulations to carry out this section. Such regulations shall include provisions to protect the confidentiality of employees and applicants making disclosures described in clauses (1) and (2) of subsection (b) and to permit the reporting of alleged violations of subsection (b) directly to the Inspector General of the Department of Defense.

(Added P.L. 98–94, § 1253(a)(1), Sept. 24, 1983, 97 Stat. 699; amended P.L. 100–26, § 7(k)(2), April 21, 1987, 101 Stat. 284; P.L. 104–106, § 1040(a)–(d)(1), Feb. 10, 1996, 110 Stat. 433.)

§ 1588. Authority to accept certain voluntary services

(a) AUTHORITY TO ACCEPT SERVICES.—Subject to subsection (b) and notwithstanding section 1342 of title 31, the Secretary concerned may accept from any person the following services:

(1) Voluntary medical services, dental services, nursing services, or other health-care related services.

(2) Voluntary services to be provided for a museum or a natural resources program.

(3) Voluntary services to be provided for programs providing services to members of the armed forces and the families of such members, including the following programs:

(A) Family support programs.

(B) Child development and youth services programs.

(C) Library and education programs.

(D) Religious programs.

(E) Housing referral programs.

(F) Programs providing employment assistance to spouses of such members.

(G) Morale, welfare, and recreation programs, to the extent not covered by another subparagraph of this paragraph.

(4) Voluntary services as a member of a funeral honors detail under section 1491 of this title.

(b) REQUIREMENTS AND LIMITATIONS.—(1) The Secretary concerned shall notify the person of the scope of the services accepted.

(2) With respect to a person providing voluntary services accepted under subsection (a), the Secretary concerned shall—

(A) supervise the person to the same extent as the Secretary would supervise a compensated employee providing similar services; and

(B) ensure that the person is licensed, privileged, has appropriate credentials, or is otherwise qualified under applicable law or regulations to provide such services.

(3) With respect to a person providing voluntary services accepted under subsection (a), the Secretary concerned may not—

(A) place the person in a policy-making position; or

(B) except as provided in subsection (e), compensate the person for the provision of such services.

(c) AUTHORITY TO RECRUIT AND TRAIN PERSONS PROVIDING SERVICES.—The Secretary concerned may recruit and train persons to provide voluntary services accepted under subsection (a).

(d) STATUS OF PERSONS PROVIDING SERVICES.—(1) Subject to paragraph (3), while providing voluntary services accepted under subsection (a) or receiving training under subsection (c), a person, other than a person referred to in paragraph (2), shall be considered to be an employee of the Federal Government only for purposes of the following provisions of law:

(A) Subchapter I of chapter 81 of title 5 (relating to compensation for work-related injuries).

(B) Section 2733 of this title and chapter 171 of title 28 (relating to claims for damages or loss).

(C) Section 552a of title 5 (relating to maintenance of records on individuals).

(D) Chapter 11 of title 18 (relating to conflicts of interest).

(2) Subject to paragraph (3), while providing a nonappropriated fund instrumentality of the United States with voluntary services accepted under subsection (a), or receiving training under subsection (c) to provide such an instrumentality with services accepted under subsection (a), a person shall be considered an employee of that instrumentality only for the following purposes:

(A) Subchapter II of chapter 81 of title 5 (relating to compensation of nonappropriated fund employees for work-related injuries).

(B) Section 2733 of this title and chapter 171 of title 28 (relating to claims for damages or loss).

(3) A person providing voluntary services accepted under subsection (a) shall be considered to be an employee of the Federal Government under paragraph (1) or (2) only with respect to services that are within the scope of the services so accepted.

(4) For purposes of determining the compensation for work-related injuries payable under chapter 81 of title 5 (pursuant to this subsection) to a person providing voluntary services accepted under subsection (a), the monthly pay of the person for such services shall be deemed to be the amount determined by multiplying—

(A) the average monthly number of hours that the person provided the services, by

(B) the minimum wage determined in accordance with section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)).

(e) REIMBURSEMENT OF INCIDENTAL EXPENSES.—The Secretary concerned may provide for reimbursement of a person for incidental expenses incurred by the person in providing voluntary services accepted under subsection (a). The Secretary shall determine which expenses are eligible for reimbursement under this subsection. Any such reimbursement may be made from appropriated or nonappropriated funds.

(f)[3] AUTHORITY TO INSTALL EQUIPMENT.—(1) The Secretary concerned may install telephone lines and any necessary telecommunication equipment in the private residences of persons, designated in accordance with the regulations prescribed under paragraph (4), who provide voluntary services accepted under subsection (a)(3).

(2) In the case of equipment installed under the authority of paragraph (1), the Secretary concerned may pay the charges incurred for the use of the equipment for authorized purposes.

(3) To carry out this subsection, the Secretary concerned may use appropriated funds (notwithstanding section 1348 of title 31) or nonappropriated funds of the military department under the jurisdiction of the Secretary or, with respect to the Coast Guard, the department in which the Coast Guard is operating.

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[3] Section 371(b) of the National Defense Authorization Act for Fiscal Year 2000 (P.L. 106–65; 113 Stat. 579) provides:

(b) REPORT ON IMPLEMENTATION.—Not later than two years after final regulations prescribed under subsection (f)(4) of section 1588 of title 10, United States Code, as added by subsection (a), take effect, the Comptroller General shall review the exercise of authority under such subsection (f) and submit to Congress a report on the findings resulting from the review.

(4) The Secretary of Defense and, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary of Transportation shall prescribe regulations to carry out this subsection.

(Added P.L. 98–94, § 1266(a), Sept. 24, 1983, 97 Stat. 704; amended P.L. 99–145, § 1624, Nov. 8, 1985, 99 Stat. 778; P.L. 99–661, § 1355, Nov. 14, 1986, 100 Stat. 3996; P.L. 101–189, § 1634, Nov. 29, 1989, 103 Stat. 1608; P.L. 102–190, § 345, Dec. 5, 1991, 105 Stat. 1346; P.L. 103–337, § 1061(a), Oct. 5, 1994, 108 Stat. 2845; P.L. 104–201, § 1074(a)(8), Sept. 23, 1996, 110 Stat. 2659; P.L. 106–65, §§ 371(a), 578(f), Oct. 5, 1999, 113 Stat. 579, 627.)

§ 1589. Participation in management of specified non-Federal entities: authorized activities

(a) AUTHORIZATION.—(1) The Secretary concerned may authorize an employee described in paragraph (2) to serve without compensation as a director, officer, or trustee, or to otherwise participate, in the management of an entity designated under subsection (b). Any such authorization shall be made on a case-by-case basis, for a particular employee to participate in a specific capacity with a specific designated entity. Such authorization may be made only for the purpose of providing oversight and advice to, and coordination with, the designated entity, and participation of the employee in the activities of the designated entity may not extend to participation in the day-to-day operations of the entity.

(2) Paragraph (1) applies to any employee of the Department of Defense or, in the case of the Coast Guard when not operating as a service in the Navy, of the Department of Transportation. For purposes of this section, the term "employee" includes a civilian officer.

(b) DESIGNATED ENTITIES.—The Secretary of Defense, and the Secretary of Transportation in the case of the Coast Guard when it is not operating as a service in the Navy, shall designate those entities for which authorization under subsection (a) may be provided. The list of entities so designated may not be revised more frequently than semiannually. In making such designations, the Secretary shall designate each military welfare society named in paragraph (2) of section 1033(b) of this title and may designate any other entity described in paragraph (3) of such section. No other entities may be designated.

(c) PUBLICATION OF DESIGNATED ENTITIES AND OF AUTHORIZED PERSONS.—A designation of an entity under subsection (b), and an authorization under subsection (a) of an employee to participate in the management of such an entity, shall be published in the Federal Register.

(d) CIVILIANS OUTSIDE THE MILITARY DEPARTMENTS.—In this section, the term "Secretary concerned" includes the Secretary of Defense with respect to employees of the Department of Defense who are not employees of a military department.

(e) REGULATIONS.—The Secretary of Defense, and the Secretary of Transportation in the case of the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section.

(Added P.L. 105–85, § 593(b)(1), Nov. 18, 1997, 111 Stat. 1763 [prior § 1589 repealed P.L. 104–201, § 1614(b)(1), Sept. 23, 1966, 110 Stat. 2739].)

[§ 1590. Repealed. P.L. 104–201, § 1633(a), Sept. 23, 1996, 110 Stat. 2751]

§ 1591. Reimbursement for travel and transportation expenses when accompanying Members of Congress

(a) Subject to subsection (b), the Secretary concerned may authorize reimbursement to a civilian employee who is accompanying a Member of Congress or a congressional employee on official travel for actual travel and transportation expenses incurred for such travel.

(b) The allowance provided in subsection (a) may be paid—

(1) at a rate that does not exceed the rate approved for official congressional travel; and

(2) only when the travel of the member is directed or approved by the Secretary concerned.

(c) In this section:

(1) The term "Member of Congress" means a member of the Senate or the House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner from Puerto Rico.

(2) The term "congressional employee" means an employee of a Member of Congress or an employee of Congress.

(3) The term "Secretary concerned" includes the Secretary of Defense with respect to civilian employees of the Department of Defense other than a military department.

(Added P.L. 100–180, § 617(b)(1), Dec. 4, 1987, 101 Stat. 1097.)

§ 1592. Prohibition on payment of severance pay to foreign nationals in the event of certain overseas base closures

Funds available to the Department of Defense (including funds in the Foreign National Employees Separation Pay Account, Defense, established under section 1581 of this title) may not be used to pay severance pay to a foreign national employed by the Department of Defense under a contract, a treaty, or a memorandum of understanding with a foreign nation that provides for payment of separation pay 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.

(Added P.L. 101–189, § 311(b)(1), Nov. 29, 1989, 103 Stat. 1411; amended P.L. 102–190, § 1003(b), Dec. 5, 1991, 105 Stat. 1457; P.L. 102–484, § 1052(21), Oct. 23, 1992, 106 Stat. 2500.)

§ 1593. Uniform allowance: civilian employees

(a) ALLOWANCE AUTHORIZED.—(1) The Secretary of Defense may pay an allowance to each civilian employee of the Department of Defense who is required by law or regulation to wear a prescribed uniform in the performance of official duties.

(2) In lieu of providing an allowance under paragraph (1), the Secretary may provide a uniform to a civilian employee referred to in such paragraph.

(3) This subsection shall not apply with respect to a civilian employee of the Defense Intelligence Agency who is entitled to an allowance under section 1622 of this title.

(b) AMOUNT OF ALLOWANCE.—Notwithstanding section 5901(a) of title 5, the amount of an allowance paid, and the cost of uniforms provided, under subsection (a) to a civilian employee may not exceed $400 per year.

(c) TREATMENT OF ALLOWANCE.—An allowance paid, or uniform provided, under subsection (a) shall be treated in the same manner as is provided in section 5901(c) of title 5 for an allowance paid under that section.

(d) USE OF APPROPRIATED FUNDS FOR ALLOWANCE.—Amounts appropriated annually to the Department of Defense for the pay of civilian employees may be used for uniforms, or for allowance for uniforms, as authorized by this section and section 5901 of title 5.

(Added P.L. 101–189, § 336(a)(1), Nov. 29, 1989, 103 Stat. 1419; amended P.L. 101–510, § 1481(d)(3), Nov. 5, 1990, 104 Stat. 1706; P.L. 104–201, § 1633(e)(1), Sept. 23, 1996, 110 Stat. 2752.)

§ 1594. Reimbursement for financial institution charges incurred because of Government error in direct deposit of pay

(a)(1) A civilian officer or employee of the Department of Defense who, in accordance with law or regulation, participates in a program for the automatic deposit of pay to a financial institution may be reimbursed for a covered late-deposit charge.

(2) A covered late-deposit charge for purposes of paragraph (1) is a charge (including an overdraft charge or a minimum balance charge) that is levied by a financial institution and that results from an administrative or mechanical error on the part of the Government that causes the pay of the officer or employee concerned to be deposited late or in an incorrect manner or amount.

(b) Reimbursements under this section shall be made from appropriations available for the pay of the officer or employee concerned.

(c) The Secretaries concerned shall prescribe regulations to carry out this section, including regulations for the manner in which reimbursement under this section is to be made.

(d) In this section:

(1) The term "financial institution" means a bank, savings and loan association, or similar institution or a credit union chartered by the United States or a State.

(2) The term "pay" includes allowances.

(Added P.L. 101–189, § 664(b)(1), Nov. 29, 1989, 103 Stat. 1466; amended P.L. 101–510, § 1484(k)(6), Nov. 5, 1990, 104 Stat. 1719; P.L. 102–25, § 701(e)(8), April 6, 1991, 105 Stat. 115; P.L. 105–261, § 564(b), Oct. 17, 1998, 112 Stat. 2029.)

§ 1595. Civilian faculty members at certain Department of Defense schools: employment and compensation

(a) AUTHORITY OF SECRETARY.—The Secretary of Defense may employ as many civilians as professors, instructors, and lecturers at the institutions specified in subsection (c) as the Secretary considers necessary.

(b) COMPENSATION OF FACULTY MEMBERS.—The compensation of persons employed under this section shall be as prescribed by the Secretary.

(c) COVERED INSTITUTIONS.—This section applies with respect to the following institutions of the Department of Defense:

(1) The National Defense University.

(2) The Foreign Language Center of the Defense Language Institute.

(3) The George C. Marshall European Center for Security Studies.

(4) The English Language Center of the Defense Language Institute.

(5) The Asia-Pacific Center for Security Studies.

(d) APPLICATION TO FACULTY MEMBERS AT NDU.—In the case of the National Defense University, this section applies with respect to persons selected by the Secretary for employment as professors, instructors, and lecturers at the National Defense University after February 27, 1990.

(e) APPLICABILITY TO DIRECTOR AND DEPUTY DIRECTOR AT CERTAIN INSTITUTIONS.—In addition to the persons specified in subsection (a), this section also applies with respect to the Director and the Deputy Director of the following:

(1) The George C. Marshall European Center for Security Studies.

(2) The Asia-Pacific Center for Security Studies.

(3) The Center for Hemispheric Defense Studies.

(Added P.L. 101–189, § 1124(a)(1), Nov. 29, 1989, 103 Stat. 1558; amended P.L. 102–25, § 701(h)(1), April 6, 1991, 105 Stat. 115; P.L. 102–190, § 911, Dec. 5, 1991, 105 Stat. 1452; P.L. 102–484, § 923(a), Oct. 23, 1992, 106 Stat. 2474; revised in its entirety P.L. 103–160, § 923(a)(1), Nov. 30, 1993, 107 Stat. 1731; P.L. 104–201, § 1607, Sept. 23, 1996, 110 Stat. 2737; P.L. 105–85, § § 921(c), 922(b), Nov. 18, 1997, 111 Stat. 1863.)

§ 1596. Foreign language proficiency: special pay for proficiency beneficial for intelligence interests

(a) The Secretary of Defense may pay special pay under this section to a civilian officer or employee of the Department of Defense who—

(1) has been certified as being proficient in a foreign language identified by the Secretary of Defense as being a language in which proficiency by civilian personnel of the Department is important for the effective collection, production, or dissemination of foreign intelligence information; and

(2) is serving in a position, or is subject to assignment to a position, in which proficiency in that language facilitates performance of officially assigned intelligence or intelligence-related duties.

(b) The annual rate of special pay under subsection (a) shall be determined by the Secretary of Defense.

(c) Special pay under this section may be paid in addition to any compensation authorized under section 1602 of this title for which an officer or employee is eligible.

(Added as § 1592 P.L. 101–193, § 501(a)(1), Nov. 30, 1989, 103 Stat. 1707; renumbered as § 1596 P.L 101–510, § 1484(a), Nov. 5, 1990, 104 Stat. 1715; amended P.L. 104–201, § 1633(e)(2), Sept. 23, 1996, 110 Stat. 2752; P.L. 106–398, § 1[1131(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–317.)

§ 1596a. Foreign language proficiency: special pay for proficiency beneficial for other national security interests

(a) AUTHORITY.—The Secretary of Defense may pay special pay under this section to an employee of the Department of Defense who—

(1) has been certified by the Secretary to be proficient in a foreign language identified by the Secretary as being a language in which proficiency by civilian personnel of the Department is necessary because of national security interests;

(2) is assigned duties requiring proficiency in that foreign language during a contingency operation supported by the armed forces; and

(3) is not receiving special pay under section 1596 of this title.

(b) RATE.—The rate of special pay for an employee under this section shall be prescribed by the Secretary, but may not exceed five percent of the employee's rate of basic pay.

(c) RELATIONSHIP TO OTHER PAY AND ALLOWANCES.—Special pay under this section is in addition to any other pay or allowances to which the employee is entitled.

(d) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(Added P.L. 106–398, § 1[1131(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–317.)

§ 1597. Civilian positions: guidelines for reductions

(a) REQUIREMENT OF GUIDELINES FOR REDUCTIONS IN CIVILIAN POSITIONS.—Reductions in the number of civilian positions of the Department of Defense during a fiscal year, if any, shall be carried out in accordance with the guidelines established pursuant to subsection (b).

(b) GUIDELINES.—The Secretary of Defense shall establish guidelines for the manner in which reductions in the number of civilian positions of the Department of Defense are made. The guidelines shall include procedures for reviewing civilian positions for reductions according to the following order:

(1) Positions filled by foreign national employees overseas.

(2) All other positions filled by civilian employees overseas.

(3) Overhead, indirect, and administrative positions in headquarters or field operating agencies in the United States.

(4) Direct operating or production positions in the United States.

(c) MASTER PLAN.—(1) The Secretary of Defense shall include in the materials submitted to Congress in support of the budget request for the Department of Defense for each fiscal year a civilian positions master plan described in paragraph (2) for the Department of Defense as a whole and for each military department, Defense Agency, and other principal component of the Department of Defense.

(2) The master plan referred to in paragraph (1) shall include the information described in paragraph (3). Such information shall include information for each of the two fiscal years immediately preceding such fiscal year and projected information for such fiscal

year and each of the two fiscal years immediately following such fiscal year.

(3) The information referred to in paragraph (2) is the following:

(A) A profile of the levels of civilian positions sufficient to establish and maintain a baseline for tracking annual accessions and losses of civilian positions and to provide for the analysis of trends in the levels of civilian positions within the Department of Defense as a whole and for each military department, major subordinate command of each military department, Defense Agency, and other principal component of the Department of Defense. The profile shall include information on the following:

(i) The total number of civilian employees.

(ii) Of the total number of civilian employees, the number of civilian employees in the United States, the number of civilian employees overseas, and the number of foreign national employees overseas.

(iii) Of the total number of civilian employees at the end of each fiscal year covered by the master plan, the number of full-time employees, the number of part-time employees, and the number of temporary and on-call employees.

(iv) Accessions and losses of civilian positions, shown in the aggregate and by the number of full-time employees, the number of part-time employees, and the number of temporary and on-call employees.

(v) The number of losses of civilian positions, by appropriation account, due to reductions in force, furloughs, or functional transfers or other significant transfers of work away from the military department, Defense Agency, or other component.

(vi) The extent to which accessions and losses of civilian positions are due to functional transfers or competitive actions that are related to the Department of Defense management review initiatives of the Secretary of Defense.

(vii) The total number of individuals employed by contractors and subcontractors of the Department of Defense under a contract or subcontract entered into pursuant to Office of Management and Budget Circular A–76 to perform commercial activities for the Department of Defense, a military department, a defense agency, or other component.

(B) For industrial-type and commercial-type activities funded through the Defense Business Operations Fund, the following information:

(i) Annual trends in the amount of funded workload for each activity, based upon the average number of months of accumulated, funded workload to be performed, or projected to be performed, by the activity.

(ii) The extent to which such workload is funded by funds that are appropriated from appropriation accounts and managed through the Defense Business Operations Fund.

(C) Information that indicates trends in the extent to which the military department, Defense Agency, or other component enters into contracts with persons outside of the Department of Defense, rather than uses civilian positions, to perform work for the military department, Defense Agency, or other component.

(D) Information that indicates the extent to which the Department of Defense management review initiatives of the Secretary of Defense and other productivity enhancement programs of the Department of Defense significantly affect the number of losses of civilian positions, particularly administrative and management positions.

(4) The Secretary of Defense shall include in the materials referred to in paragraph (1) a report on the implementation of the master plan for the fiscal year immediately preceding the fiscal year for which such materials are submitted.

(d) EXCEPTIONS.—The Secretary of Defense may permit a variation from the guidelines established under subsection (b) or a master plan prepared under subsection (c) if the Secretary determines that such variation is critical to the national security. The Secretary shall immediately notify the Congress of any such variation and the reasons for such variation.

(e) INVOLUNTARY REDUCTIONS OF CIVILIAN POSITIONS.—The Secretary of Defense may not implement any involuntary reduction or furlough of civilian positions in a military department, Defense Agency, or other component of the Department of Defense until the expiration of the 45-day period beginning on the date on which the Secretary submits to Congress a report setting forth the reasons why such reductions or furloughs are required and a description of any change in workload or positions requirements that will result from such reductions or furloughs.

(Added P.L. 101–510, § 322(a), Nov. 5, 1990, 104 Stat. 1528; revised in its entirety P.L. 102–484, § 371(a), Oct. 23, 1992, 106 Stat. 2382; P.L. 103–35, § 201(d)(1), May 31, 1993, 107 Stat. 98; P.L. 103–160, § 363, Nov. 30, 1993, 107 Stat. 1628.)

§ 1598. Assistance to terminated employees to obtain certification and employment as teachers or employment as teachers' aides

(a) PLACEMENT PROGRAM.—The Secretary of Defense may establish a program—

(1) to assist eligible civilian employees of the Department of Defense and the Department of Energy after the termination of their employment to obtain—

(A) certification or licensure as elementary or secondary school teachers; or

(B) the credentials necessary to serve as teachers' aides; and

(2) to facilitate the employment of such employees by local educational agencies that—

(A) are receiving grants 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 their jurisdictions concentrations of children from low-income families; and

(B) are also experiencing a shortage of teachers or teachers' aides.

(b) ELIGIBLE EMPLOYEES.—(1) A civilian employee of the Department of Defense or the Department of Energy shall be eligible for selection by the Secretary of Defense to participate in the placement program authorized by subsection (a) if the employee—

(A) during the five-year period beginning October 1, 1992, is terminated from such employment as a result of reductions in defense spending or the closure or realignment of a military installation, as determined by the Secretary of Defense or the Secretary of Energy, as the case may be;

(B) has received—

(i) in the case of an employee 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

(ii) in the case of an employee 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

(C) satisfies such other criteria for selection as the Secretary of Defense may prescribe.

(2) The Secretary of Defense may accept an application from a civilian employee referred to in paragraph (1) who was terminated during the period beginning on October 1, 1990, and ending on October 1, 1992, if the employee otherwise satisfies the eligibility criteria specified in that paragraph.

(c) SELECTION OF PARTICIPANTS.—(1) Selection of civilian employees to participate in the placement program shall be made on the basis of applications submitted to the Secretary of Defense after the employees receive a notice of termination. An application shall be filed within such time, in such form, and contain such information as the Secretary of Defense may require.

(2) In selecting participants to receive assistance for placement as elementary or secondary school teachers, the Secretary of Defense shall give priority to civilian employees 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.

(3) The Secretary of Defense may not select a civilian employee to participate in the program unless the Secretary has sufficient appropriations for the placement program available at the time of the selection to satisfy the obligations to be incurred by the United States under the program with respect to that member.

(d) AGREEMENT.—A civilian employee selected to participate in the placement program shall be required to enter into an agreement with the Secretary of Defense in which the employee 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 employee 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 employee 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.

(e) STIPEND FOR PARTICIPANTS.—(1) Except as provided in paragraph (2), 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 civilian employee selected to participate in the placement program who receives separation pay under section 5597 of title 5 shall not be paid a stipend under paragraph (1).

(3) A stipend paid under paragraph (1) 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.).

(f) 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 program authorized by this section.

(Added P.L. 102–484, § 4442(a), Oct. 23, 1992, 106 Stat. 2730; amended P.L. 103–35, § 201(h)(1), May 31, 1993, 107 Stat. 100; P.L. 103–160, § 1331(c)(2), Nov. 30, 1993, 107 Stat. 1792; P.L. 103–382, § 391(b)(3), Oct. 20, 1994, 108 Stat. 4021; P.L. 104–106, § 1503(a)(14), Feb. 10, 1996, 110 Stat. 511; P.L. 104–201, § 576(b), Sept. 23, 1996, 110 Stat. 2735; P.L. 106–398, § 1[1087(a)(11)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290.)

[§ 1599. Transferred to § 1611]

§ 1599a. Financial assistance to certain employees in acquisition of critical skills

(a) TRAINING PROGRAM.—The Secretary of Defense shall establish an undergraduate training program with respect to civilian employees in the Military Department Civilian Intelligence Personnel Management System that is similar in purpose, conditions,

content, and administration to the program established by the Secretary of Defense under section 16 of the National Security Act of 1959 (50 U.S.C. 402 note) for civilian employees of the National Security Agency.

(b) USE OF FUNDS FOR TRAINING PROGRAM.—Any payment made by the Secretary to carry out the program required to be established by subsection (a) may be made in any fiscal year only to the extent that appropriated funds are available for that purpose.

(Added P.L. 104–93, § 505(a), Jan. 6, 1996, 109 Stat. 973.)

§ 1599b. Employees abroad: travel expenses; health care

(a) IN GENERAL.—The Secretary of Defense may provide civilian employees, and members of their families, abroad with benefits that are comparable to certain benefits that are provided by the Secretary of State to members of the Foreign Service and their families abroad as described in subsections (b) and (c). The Secretary may designate the employees and members of families who are eligible to receive the benefits.

(b) TRAVEL AND RELATED EXPENSES.—The Secretary of Defense may pay travel expenses and related expenses for purposes and in amounts that are comparable to the purposes for which, and the amounts in which, travel and related expenses are paid by the Secretary of State under section 901 of the Foreign Service Act of 1980 (22 U.S.C. 4081).

(c) HEALTH CARE PROGRAM.—The Secretary of Defense may establish a health care program that is comparable to the health care program established by the Secretary of State under section 904 of the Foreign Service Act of 1980 (22 U.S.C. 4084).

(d) ASSISTANCE.—The Secretary of Defense may enter into agreements with the heads of other departments and agencies of the Government in order to facilitate the payment of expenses authorized by subsection (b) and to carry out a health care program authorized by subsection (c).

(e) ABROAD DEFINED.—In this section, the term "abroad" means outside—

(1) the United States; and

(2) the territories and possessions of the United States.

(Added P.L. 104–201, § 1604, Sept. 23, 1996, 110 Stat. 2735.)

[§ 1599c. Repealed. P.L. 105–339, § 6(c)(1), Oct. 31, 1998, 112 Stat. 3188]

CHAPTER 83—CIVILIAN DEFENSE INTELLIGENCE EMPLOYEES

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SUBCHAPTER I—DEFENSE-WIDE INTELLIGENCE PERSONNEL POLICY

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§ 1601. Civilian intelligence personnel: general authority to establish excepted positions, appoint personnel, and fix rates of pay

(a) GENERAL AUTHORITY.—The Secretary of Defense may—

(1) establish, as positions in the excepted service, such defense intelligence positions in the Department of Defense as the Secretary determines necessary to carry out the intelligence functions of the Department, including—

(A) Intelligence Senior Level positions designated under section 1607 of this title; and

(B) positions in the Defense Intelligence Senior Executive Service;

(2) appoint individuals to those positions (after taking into consideration the availability of preference eligibles for appointment to those positions); and

(3) fix the compensation of such individuals for service in those positions.

(b) CONSTRUCTION WITH OTHER LAWS.—The authority of the Secretary of Defense under subsection (a) applies without regard to the provisions of any other law relating to the appointment, number, classification, or compensation of employees.

(Added P.L. 97–89, § 701(a)(1), Dec. 4, 1981, 95 Stat. 1159; amended P.L. 101–193, § 507(a)(2), Nov. 30, 1989, 103 Stat. 1710; P.L. 101–194, § 506(c)(3), Nov. 30, 1989, 103 Stat. 1759; as amended by P.L. 101–280, § 6(d)(4), May 4, 1990, 104 Stat. 161; P.L. 103–359, § 501(b)(1)(B), Oct. 14, 1994, 108 Stat. 3428; revised in its entirety P.L. 104–201, § 1632(a)(3), Sept. 23, 1996, 110 Stat. 2746; P.L. 106–398, § 1[1141(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–318.)

§ 1602. Basic pay

(a) AUTHORITY TO FIX RATES OF BASIC PAY.—The Secretary of Defense (subject to the provisions of this section) shall fix the rates of basic pay for positions established under section 1601 of this title in relation to the rates of basic pay provided in subpart D of part III of title 5 for positions subject to that subpart which have corresponding levels of duties and responsibilities.

(b) MAXIMUM RATES.—A rate of basic pay fixed under subsection (a) for a position established under section 1601 of this title may not (except as otherwise provided by law) exceed—

(1) in the case of a Defense Intelligence Senior Executive Service position, the maximum rate provided in section 5382 of title 5;

(2) in the case of an Intelligence Senior Level position, the maximum rate provided in section 5382 of title 5; and

(3) in the case of any other position, the maximum rate provided in section 5306(e) of title 5.

(c) PREVAILING RATE SYSTEMS.—The Secretary of Defense may, consistent with section 5341 of title 5, adopt such provisions of that title as provide for prevailing rate systems of basic pay and may apply those provisions to positions for civilian employees in or under which the Department of Defense may employ individuals described by section 5342(a)(2)(A) of that title.

(Added P.L. 104–201, § 1632(a)(3), Sept. 23, 1996, 110 Stat. 2746 [former § 1602 transferred to § 1621].)

§ 1603. Additional compensation, incentives, and allowances

(a) ADDITIONAL COMPENSATION BASED ON TITLE 5 AUTHORITIES.—The Secretary of Defense may provide employees in defense intelligence positions compensation (in addition to basic pay), including benefits, incentives, and allowances, consistent with, and not in excess of the level authorized for, comparable positions authorized by title 5.

(b) ALLOWANCES BASED ON LIVING COSTS AND ENVIRONMENT.—(1) In addition to basic pay, employees in defense intelligence positions who are citizens or nationals of the United States and are stationed outside the continental United States or in Alaska may be paid an allowance, in accordance with regulations prescribed by the Secretary of Defense, while they are so stationed.

(2) An allowance under this subsection shall be based on—

(A) living costs substantially higher than in the District of Columbia;

(B) conditions of environment which (i) differ substantially from conditions of environment in the continental United States, and (ii) warrant an allowance as a recruitment incentive; or

(C) both of the factors specified in subparagraphs (A) and (B).

(3) An allowance under this subsection may not exceed the allowance authorized to be paid by section 5941(a) of title 5 for employees whose rates of basic pay are fixed by statute.

(Added P.L. 97–89, § 701(a)(1), Dec. 4, 1981, 95 Stat. 1160; amended P.L. 99–145, § 1302(a)(3), Nov. 8, 1985, 99 Stat. 738; P.L. 99–661, § 1343(a)(9), Nov. 14, 1986, 100 Stat. 3992; revised in its entirety P.L. 104–201, § 1632(a)(3), Sept. 23, 1996, 110 Stat. 2745–2746.)

[§ 1604. Repealed. P.L. 104–201, § 1632(a)(3), Sept. 23, 1996, 110 Stat. 2745]

§ 1605. Benefits for certain employees assigned outside the United States [1]

(a)(1) The Secretary of Defense may provide to civilian personnel described in subsection (d) allowances and benefits comparable to those provided by the Secretary of State to officers and employees of the Foreign Service under paragraphs (2), (3), (4), (5), (6), (7), (8), and (13) of section 901 and sections 705 and 903 of the Foreign Service Act of 1980 (22 U.S.C. 4081 (2), (3), (4), (5), (6), (7), (8), and (13), 4025, 4083) and under section 5924(4) of title 5.

(2) The Secretary may also provide to any such civilian personnel special retirement accrual benefits in the same manner provided for certain officers and employees of the Central Intelligence Agency in section 303 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2153) and in section 18 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403r).

(b) The authority of the Secretary of Defense to make payments under subsection (a) is effective for any fiscal year only to the extent that appropriated funds are available for such purpose.

(c) Regulations prescribed under subsection (a) may not take effect until the Secretary of Defense has submitted such regulations to—

(1) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

(2) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(d) Subsection (a) applies to civilian personnel of the Department of Defense who—

(1) are United States nationals;

(2) in the case of employees of the Defense Intelligence Agency, are assigned to duty outside the United States and, in the case of other employees, are assigned to Defense Attaché Offices or Defense Intelligence Agency Liaison Offices outside the United States; and

(3) are designated by the Secretary of Defense for the purposes of subsection (a).

(Added as § 192 by P.L. 98–215, § 501(a), Dec. 9, 1983, 97 Stat. 1478; renumbered as § 1605 and amended P.L. 99–145, § 1302(a)(1), Nov. 8, 1985, 99 Stat. 737; amended P.L. 99–335, § 507(b), June 6, 1986, 100 Stat. 628; P.L. 99–569, § 501, Oct. 27, 1986, 100 Stat. 3198; P.L. 101–193, § 505(a), Nov. 30, 1989, 103 Stat. 1709; P.L. 102–496, § 803(d), Oct. 24, 1992, 106 Stat. 3253; P.L. 103–160, § 1182(a)(3), Nov. 30, 1993, 107 Stat. 1771; P.L. 104–93, § 502(a), Jan. 6, 1996, 109 Stat. 972; P.L. 104–201, § 1633(c)(1), Sept. 23, 1996, 110 Stat. 2751; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 1606. Defense Intelligence Senior Executive Service

(a) ESTABLISHMENT.—The Secretary of Defense may establish a Defense Intelligence Senior Executive Service for defense intelligence positions established pursuant to section 1601(a) of this title that are equivalent to Senior Executive Service positions. The

[1] Section 431 of title 37, United States Code, provides similar benefits for members of the Armed Forces assigned to the Defense Intelligence Agency.

number of positions in the Defense Intelligence Senior Executive Service may not exceed 517.

(b) REGULATIONS CONSISTENT WITH TITLE 5 PROVISIONS.—The Secretary of Defense shall prescribe regulations for the Defense Intelligence Senior Executive Service which are consistent with the requirements set forth in sections 3131, 3132(a)(2), 3396(c), 3592, 3595(a), 5384, and 6304 of title 5, subsections (a), (b), and (c) of section 7543 of such title (except that any hearing or appeal to which a member of the Defense Intelligence Senior Executive Service is entitled shall be held or decided pursuant to those regulations), and subchapter II of chapter 43 of such title. To the extent that the Secretary determines it practicable to apply to members of, or applicants for, the Defense Intelligence Senior Executive Service other provisions of title 5 that apply to members of, or applicants for, the Senior Executive Service, the Secretary shall also prescribe regulations to implement those provisions with respect to the Defense Intelligence Senior Executive Service.

(c) AWARD OF RANK TO MEMBERS OF THE DEFENSE INTELLIGENCE SENIOR EXECUTIVE SERVICE.—The President, based on the recommendations of the Secretary of Defense, may award a rank referred to in section 4507 of title 5 to members of the Defense Intelligence Senior Executive Service. The award of such rank shall be made in a manner consistent with the provisions of that section.

(Added P.L. 104–201, § 1632(b), Sept. 23, 1996, 110 Stat. 2747 [former § 1606 transferred to § 1622]; amended P.L. 106–398, § 1[1142], Oct. 30, 2000, 114 Stat. 1654, 1654A–319.)

§ 1607. Intelligence Senior Level positions

(a) DESIGNATION OF POSITIONS.—The Secretary of Defense may designate as an Intelligence Senior Level position any defense intelligence position that, as determined by the Secretary—

(1) is classifiable above grade GS–15 of the General Schedule;

(2) does not satisfy functional or program management criteria for being designated a Defense Intelligence Senior Executive Service position; and

(3) has no more than minimal supervisory responsibilities.

(b) REGULATIONS.—Subsection (a) shall be carried out in accordance with regulations prescribed by the Secretary of Defense.

(Added P.L. 104–201, § 1632(b), Sept. 23, 1996, 110 Stat. 2747.)

§ 1608. Time-limited appointments

(a) AUTHORITY FOR TIME-LIMITED APPOINTMENTS.—The Secretary of Defense may by regulation authorize appointing officials to make time-limited appointments to defense intelligence positions specified in the regulations.

(b) REVIEW OF USE OF AUTHORITY.—The Secretary of Defense shall review each time-limited appointment in a defense intelligence position at the end of the first year of the period of the appointment and determine whether the appointment should be continued for the remainder of the period. The continuation of a time-limited appointment after the first year shall be subject to the approval of the Secretary.

(c) CONDITION ON PERMANENT APPOINTMENT TO DEFENSE INTELLIGENCE SENIOR EXECUTIVE SERVICE.—An employee serving

in a defense intelligence position pursuant to a time-limited appointment is not eligible for a permanent appointment to a Defense Intelligence Senior Executive Service position (including a position in which the employee is serving) unless the employee is selected for the permanent appointment on a competitive basis.

(d) TIME-LIMITED APPOINTMENT DEFINED.—In this section, the term "time-limited appointment" means an appointment (subject to the condition in subsection (b)) for a period not to exceed two years.

(Added P.L. 104–201, § 1632(b), Sept. 23, 1996, 110 Stat. 2748 [former § 1608 transferred to § 1623].)

§ 1609. Termination of defense intelligence employees

(a) TERMINATION AUTHORITY.—Notwithstanding any other provision of law, the Secretary of Defense may terminate the employment of any employee in a defense intelligence position if the Secretary—

(1) considers that action to be in the interests of the United States; and

(2) determines that the procedures prescribed in other provisions of law that authorize the termination of the employment of such employee cannot be invoked in a manner consistent with the national security.

(b) FINALITY.—A decision by the Secretary of Defense to terminate the employment of an employee under this section is final and may not be appealed or reviewed outside the Department of Defense.

(c) NOTIFICATION TO CONGRESSIONAL COMMITTEES.—Whenever the Secretary of Defense terminates the employment of an employee under the authority of this section, the Secretary shall promptly notify the congressional oversight committees of such termination.

(d) PRESERVATION OF RIGHT TO SEEK OTHER EMPLOYMENT.—Any termination of employment under this section does not affect the right of the employee involved to seek or accept employment with any other department or agency of the United States if that employee is declared eligible for such employment by the Director of the Office of Personnel Management.

(e) LIMITATION ON DELEGATION.—The authority of the Secretary of Defense under this section may be delegated only to the Deputy Secretary of Defense, the head of an intelligence component of the Department of Defense (with respect to employees of that component), or the Secretary of a military department (with respect to employees of that department). An action to terminate employment of such an employee by any such official may be appealed to the Secretary of Defense.

(Added P.L. 104–201, § 1632(b), Sept. 23, 1996, 110 Stat. 2748.)

§ 1610. Reductions and other adjustments in force

(a) IN GENERAL.—The Secretary of Defense shall prescribe regulations for the separation of employees in defense intelligence positions, including members of the Defense Intelligence Senior Executive Service and employees in Intelligence Senior Level positions, during a reduction in force or other adjustment in force. The regulations shall apply to such a reduction in force or other adjust-

ment in force notwithstanding sections 3501(b) and 3502 of title 5.

(b) MATTERS TO BE GIVEN EFFECT.—The regulations shall give effect to the following:

(1) Tenure of employment.

(2) Military preference, subject to sections 3501(a)(3) and 3502(b) of title 5.

(3) The veteran's preference under section 3502(b) of title 5.

(4) Performance.

(5) Length of service computed in accordance with the second sentence of section 3502(a) of title 5.

(c) REGULATIONS RELATING TO DEFENSE INTELLIGENCE SES.—The regulations relating to removal from the Defense Intelligence Senior Executive Service in a reduction in force or other adjustment in force shall be consistent with section 3595(a) of title 5.

(d) RIGHT OF APPEAL.—(1) The regulations shall provide a right of appeal regarding a personnel action under the regulations. The appeal shall be determined within the Department of Defense. An appeal determined at the highest level provided in the regulations shall be final and not subject to review outside the Department of Defense. A personnel action covered by the regulations is not subject to any other provision of law that provides appellate rights or procedures.

(2) Notwithstanding paragraph (1), a preference eligible referred to in section 7511(a)(1)(B) of title 5 may elect to have an appeal of a personnel action taken against the preference eligible under the regulation determined by the Merit Systems Protection Board instead of having the appeal determined within the Department of Defense. Section 7701 of title 5 shall apply to any such appeal to the Merit Systems Protection Board.

(e) CONSULTATION WITH OPM.—Regulations under this section shall be prescribed in consultation with the Director of the Office of Personnel Management.

(Added P.L. 104–201, § 1632(b), Sept. 23, 1996, 110 Stat. 2749.)

§ 1611. Postemployment assistance: certain terminated intelligence employees

(a) AUTHORITY.—Subject to subsection (c), the Secretary of Defense may, in the case of any individual who is a qualified former intelligence employee, use appropriated funds—

(1) to assist that individual in finding and qualifying for employment other than in a defense intelligence position;

(2) to assist that individual in meeting the expenses of treatment of medical or psychological disabilities of that individual; and

(3) to provide financial support to that individual during periods of unemployment.

(b) QUALIFIED FORMER INTELLIGENCE EMPLOYEES.—For purposes of this section, a qualified former intelligence employee is an individual who was employed as a civilian employee of the Department of Defense in a sensitive defense intelligence position—

(1) who has been found to be ineligible for continued access to information designated as "Sensitive Compartmented Information" and employment in a defense intelligence position; or

(2) whose employment in a defense intelligence position has been terminated.

(c) CONDITIONS.—Assistance may be provided to a qualified former intelligence employee under subsection (a) only if the Secretary determines that such assistance is essential to—

(1) maintain the judgment and emotional stability of the qualified former intelligence employee; and

(2) avoid circumstances that might lead to the unlawful disclosure of classified information to which the qualified former intelligence employee had access.

(d) DURATION OF ASSISTANCE.—Assistance may not be provided under this section in the case of any individual after the end of the five-year period beginning on the date of the termination of the employment of the individual with in a defense intelligence position.

(e) ANNUAL REPORT.—(1) The Secretary of Defense shall submit to the congressional committees specified in paragraph (2) an annual report with respect to any expenditure made under this section.

(2) The committees referred to in paragraph (1) are the following:

(A) The Committee on Armed Services, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.

(B) The Committee on Armed Services, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate.

(Added as § 1599 P.L. 103–359, § 806(a)(1), Oct. 14, 1994, 108 Stat. 3441; amended P.L. 104–106, § 1502(a)(11), Feb. 10, 1996, 110 Stat. 503; transferred, redesignated as § 1611, and amended P.L. 104–201, § 1632(c), Sept. 23, 1996, 110 Stat. 2749; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774; P.L. 106–398, § 1[1141(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–318.)

§ 1612. Merit system principles and civil service protections: applicability

(a) APPLICABILITY OF MERIT SYSTEM PRINCIPLES.—Section 2301 of title 5 shall apply to the exercise of authority under this subchapter (other than sections 1605 and 1611).

(b) CIVIL SERVICE PROTECTIONS.—(1) If, in the case of a position established under authority other than section 1601(a)(1) of this title that is reestablished as an excepted service position under that section, the provisions of law referred to in paragraph (2) applied to the person serving in that position immediately before the position is so reestablished and such provisions of law would not otherwise apply to the person while serving in the position as so reestablished, then such provisions of law shall, subject to paragraph (3), continue to apply to the person with respect to service in that position for as long as the person continues to serve in the position without a break in service.

(2) The provisions of law referred to in paragraph (1) are the following provisions of title 5:

(A) Section 2302, relating to prohibited personnel practices.

(B) Chapter 75, relating to adverse actions.

(3)(A) Notwithstanding any provision of chapter 75 of title 5, an appeal of an adverse action by an individual employee covered by paragraph (1) shall be determined within the Department of Defense if the employee so elects.

(B) The Secretary of Defense shall prescribe the procedures for initiating and determining appeals of adverse actions pursuant to elections made under subparagraph (A).

(Added P.L. 104–201, § 1632(d), Sept. 23, 1996, 110 Stat. 2750.)

§ 1613. Miscellaneous provisions

(a) COLLECTIVE BARGAINING AGREEMENTS.—Nothing in sections 1601 through 1603 and 1606 through 1610 may be construed to impair the continued effectiveness of a collective bargaining agreement with respect to an agency or office that is a successor to an agency or office covered by the agreement before the succession.

(b) NOTICE TO CONGRESS OF REGULATIONS.—The Secretary of Defense shall notify Congress of any regulations prescribed to carry out this subchapter (other than sections 1605 and 1611). Such notice shall be provided by submitting a copy of the regulations to the congressional oversight committees not less than 60 days before such regulations take effect.

(Added P.L. 104–201, § 1632(d), Sept. 23, 1996, 110 Stat. 2750; amended P.L. 105–85, § 1073(a)(32), Nov. 18, 1997, 111 Stat. 1902.)

§ 1614. Definitions

In this subchapter:

(1) The term "defense intelligence position" means a civilian position as an intelligence officer or intelligence employee of the Department of Defense.

(2) The term "intelligence component of the Department of Defense" means any of the following:

(A) The National Security Agency.

(B) The Defense Intelligence Agency.

(C) The National Imagery and Mapping Agency.

(D) Any other component of the Department of Defense that performs intelligence functions and is designated by the Secretary of Defense as an intelligence component of the Department of Defense.

(E) Any successor to a component specified in, or designated pursuant to, this paragraph.

(3) The term "congressional oversight committees" means—

(A) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

(B) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(4) The term "excepted service" has the meaning given such term in section 2103 of title 5.

(5) The term "preference eligible" has the meaning given such term in section 2108(3) of title 5.

(6) The term "Senior Executive Service position" has the meaning given such term in section 3132(a)(2) of title 5.

(7) The term "collective bargaining agreement" has the meaning given such term in section 7103(8) of title 5.

(Added P.L. 104–201, § 1632(d), Sept. 23, 1996, 110 Stat. 2750; amended P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774; P.L. 106–398, § 1[1141(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–319.)

SUBCHAPTER II—DEFENSE INTELLIGENCE AGENCY PERSONNEL

Sec.
1621. Defense Intelligence Agency merit pay system.
1622. Uniform allowance: civilian employees.
1623. Financial assistance to certain employees in acquisition of critical skills.

§ 1621. Defense Intelligence Agency merit pay system

The Secretary of Defense may by regulation establish a merit pay system for such employees of the Defense Intelligence Agency as the Secretary considers appropriate. The merit pay system shall be designed to carry out purposes consistent with those set forth in section 5401 of title 5, as in effect on October 31, 1993.

(Added as § 1602 P.L. 97–89, § 701(a)(1), Dec. 4, 1981, 95 Stat. 1160; amended P.L. 98–615, § 204(b), Nov. 8, 1984, 98 Stat. 3216; P.L. 103–89, § 3(b)(3)(A), Sept. 30, 1993, 107 Stat. 982; P.L. 103–359, § 501(b)(1)(C), Nov. 14, 1994, 108 Stat. 3428; transferred, redesignated § 1621, and amended P.L. 104–201, §§ 1632(a)(1), 1633(d), Sept. 23, 1996, 110 Stat. 2745, 2752.)

§ 1622. Uniform allowance: civilian employees

(a) The Secretary of Defense may pay an allowance under this section to any civilian employee of the Defense Intelligence Agency who—

(1) is assigned to a Defense Attaché Office outside the United States; and

(2) is required by regulation to wear a prescribed uniform in performance of official duties.

(b) Notwithstanding section 5901(a) of title 5, the amount of any such allowance shall be the greater of the following:

(1) The amount provided for employees of the Department of State assigned to positions outside the United States and required by regulation to wear a prescribed uniform in performance of official duties.

(2) The maximum allowance provided under section 1593(b) of this title.

(c) An allowance paid under this section shall be treated in the same manner as is provided in subsection (c) of section 5901 of title 5 for an allowance paid under that section.

(Added as § 1606 P.L. 100–178, § 601, Dec. 2, 1987, 101 Stat. 1015; amended P.L. 101–189, § 336(b), Nov. 29, 1989, 103 Stat. 1419; redesignated § 1622 P.L. 104–201, § 1632(a)(2), Sept. 23, 1996, 110 Stat. 2745.)

§ 1623. Financial assistance to certain employees in acquisition of critical skills

(a) The Secretary of Defense shall establish an undergraduate training program with respect to civilian employees of the Defense Intelligence Agency that is similar in purpose, conditions, content, and administration to the program which the Secretary of Defense is authorized to establish under section 16 of the National Security

Agency Act of 1959 (50 U.S.C. 402 note) for civilian employees of the National Security Agency.

(b) Any payments made by the Secretary to carry out the program required to be established by subsection (a) may be made in any fiscal year only to the extent that appropriated funds are available for that purpose.

(Added as § 1608 P.L. 101–193, § 507(a)(1), Nov. 30, 1989, 103 Stat. 1710; redesignated § 1623 P.L. 104–201, § 1632(a)(2), Sept. 23, 1996, 110 Stat. 2745.)

[CHAPTER 85—REPEALED]

[§§ 1621 to 1624. Repealed. P.L. 101–510, § 1207(c), 104 Stat. 1665]

CHAPTER 87—DEFENSE ACQUISITION WORKFORCE [1]

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SUBCHAPTER I—GENERAL AUTHORITIES AND RESPONSIBILITIES

Sec.
1701. Management policies.
1702. Under Secretary of Defense for Acquisition and Technology: authorities and responsibilities.
1703. Director of Acquisition Education, Training, and Career Development.
1704. Service acquisition executives: authorities and responsibilities.
1705. Directors of Acquisition Career Management in the military departments.
1706. Acquisition career program boards.
1707. Personnel in the Office of the Secretary of Defense and in the Defense Agencies.

§ 1701. Management policies

(a) POLICIES AND PROCEDURES.—The Secretary of Defense shall establish policies and procedures for the effective management (including accession, education, training, and career development) of persons serving in acquisition positions in the Department of Defense.

(b) UNIFORM IMPLEMENTATION.—The Secretary shall ensure that, to the maximum extent practicable, acquisition workforce policies and procedures established in accordance with this chapter are uniform in their implementation throughout the Department of Defense.

(Added P.L. 101–510, § 1202(a), Nov. 5, 1990, 104 Stat. 1638.)

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[1] Section 1209(i) of the Defense Acquisition Workforce Improvement Act (title XII of P.L. 101–510) provides:

(i) CREDIT FOR EXPERIENCE IN CERTAIN POSITIONS.—For purposes of meeting any requirement under chapter 87 of title 10, United States Code (as added by section 1202), for a period of experience (such as requirements for experience in acquisition positions or in critical acquisition positions) and for purposes of coverage under the exceptions established by section 1724(c)(1) and section 1732(c)(1) of such title, any period of time spent serving in a position later designated as an acquisition position or a critical acquisition position under such chapter may be counted as experience in such a position for such purposes.

§ 1702. Under Secretary of Defense for Acquisition and Technology: authorities and responsibilities

Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary of Defense for Acquisition and Technology shall carry out all powers, functions, and duties of the Secretary of Defense with respect to the acquisition workforce in the Department of Defense. The Under Secretary shall ensure that the policies of the Secretary of Defense established in accordance with this chapter are implemented throughout the Department of Defense. The Under Secretary shall prescribe policies and requirements for the educational programs of the defense acquisition university structure established under section 1746 of this title.

(Added P.L. 101–510, § 1202(a), Nov. 5, 1990, 104 Stat. 1638–1639; amended P.L. 103–160, § 904(d), Nov. 30, 1993, 107 Stat. 1728; P.L. 105–261, § 815, Oct. 17, 1998, 112 Stat. 2088.)

§ 1703. Director of Acquisition Education, Training, and Career Development

The Under Secretary of Defense for Acquisition and Technology shall appoint a Director of Acquisition Education, Training, and Career Development within the office of the Under Secretary to assist the Under Secretary in the performance of his duties under this chapter.

(Added P.L. 101–510, § 1202(a), Nov. 5, 1990, 104 Stat. 1639; amended P.L. 103–160, § 904(d), Nov. 30, 1993, 107 Stat. 1728.)

§ 1704. Service acquisition executives: authorities and responsibilities

Subject to the authority, direction, and control of the Secretary of the military department concerned, the service acquisition executive for each military department shall carry out all powers, functions, and duties of the Secretary concerned with respect to the acquisition workforce within the military department concerned and shall ensure that the policies of the Secretary of Defense established in accordance with this chapter are implemented in that department.

(Added P.L. 101–510, § 1202(a), Nov. 5, 1990, 104 Stat. 1639.)

§ 1705. Directors of Acquisition Career Management in the military departments

There shall be a Director of Acquisition Career Management for each military department within the office of the service acquisition executive to assist the executive in the performance of his duties under this chapter. The Secretary of the Navy, acting through the service acquisition executive, may appoint separate directors for the Navy and the Marine Corps.

(Added P.L. 101–510, § 1202(a), Nov. 5, 1990, 104 Stat. 1639.)

§ 1706. Acquisition career program boards

(a) ESTABLISHMENT.—The Secretary of each military department, acting through the service acquisition executive, shall establish an acquisition career program board to advise the service acquisition executive in managing the accession, training, education, and career development of military and civilian personnel in the

acquisition workforce and in selecting individuals for an Acquisition Corps under section 1731 of this title.

(b) COMPOSITION OF BOARD.—Each acquisition career program board shall include the Director of Acquisition Career Management (or his representative), the Assistant Secretary with responsibility for manpower (or his representative), and the military and civilian senior officials with responsibility for personnel development in the various acquisition career fields. The service acquisition executive (or his representative) shall be the head of the board.

(c) SUBORDINATE BOARDS.—The Secretary of a military department may establish a subordinate board structure in the department to which functions of the acquisition career program board may be delegated.

(Added P.L. 101–510, § 1202(a), Nov. 5, 1990, 104 Stat. 1639.)

§ 1707. Personnel in the Office of the Secretary of Defense and in the Defense Agencies

(a) POLICIES.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology, shall establish and implement, in such manner as the Secretary considers appropriate, policies and procedures for the effective management, including accession, education, training, and career development, of persons serving in acquisition positions in the Office of the Secretary of Defense and the Defense Agencies. Such policies and procedures shall include (1) the establishment of one or more Acquisition Corps with respect to such persons, and (2) the establishment of an acquisition career program board (and any appropriate subordinate board structure) with respect to such persons. The Secretary shall ensure that, to the maximum extent practicable, such policies and procedures are as uniform as practicable with the policies established under this chapter for the military departments.

(b) MANAGEMENT.—The Director of Acquisition Education, Training, and Career Development appointed under section 1703 of this title shall serve as the Director of Acquisition Career Management for the Office of the Secretary of Defense and for the Defense Agencies.

(Added P.L. 101–510, § 1202(a), Nov. 5, 1990, 104 Stat. 1639; amended P.L. 103–160, § 904(d), Nov. 30, 1993, 107 Stat. 1728.)

SUBCHAPTER II—DEFENSE ACQUISITION POSITIONS

Sec.
1721. Designation of acquisition positions.
1722. Career development.
1723. General education, training, and experience requirements.
1724. Contracting positions: qualification requirements.
1725. Office of Personnel Management approval.

§ 1721. Designation of acquisition positions

(a) DESIGNATION.—The Secretary of Defense shall designate in regulations those positions in the Department of Defense that are acquisition positions for purposes of this chapter.

(b) REQUIRED POSITIONS.—In designating the positions under subsection (a), the Secretary shall include, at a minimum, all acquisition-related positions in the following areas:

(1) Program management.

(2) Systems planning, research, development, engineering, and testing.

(3) Procurement, including contracting.

(4) Industrial property management.

(5) Logistics.

(6) Quality control and assurance.

(7) Manufacturing and production.

(8) Business, cost estimating, financial management, and auditing.

(9) Education, training, and career development.

(10) Construction.

(11) Joint development and production with other government agencies and foreign countries.

(c) MANAGEMENT HEADQUARTERS ACTIVITIES.—The Secretary also shall designate as acquisition positions under subsection (a) those acquisition-related positions which are in management headquarters activities and in management headquarters support activities. For purposes of this subsection, the terms "management headquarters activities" and "management headquarters support activities" have the meanings given those terms in Department of Defense Directive 5100.73, entitled "Department of Defense Management Headquarters and Headquarters Support Activities", dated November 12, 1996.

(Added P.L. 101–510, § 1202(a), Nov. 5, 1990, 104 Stat. 1640; amended P.L. 102–25, § 701(j)(1), April 6, 1991, 105 Stat. 116; P.L. 105–85, § 912(f), Nov. 18, 1997, 111 Stat. 1862.)

§ 1722. Career development

(a) CAREER PATHS.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology, shall ensure that appropriate career paths for civilian and military personnel who wish to pursue careers in acquisition are identified in terms of the education, training, experience, and assignments necessary for career progression of civilians and members of the armed forces to the most senior acquisition positions. The Secretary shall make available published information on such career paths.

(b) LIMITATION ON PREFERENCE FOR MILITARY PERSONNEL.—(1) The Secretary of Defense shall ensure that no requirement or preference for a member of the armed forces is used in the consideration of persons for acquisition positions, except as provided in the policy established under paragraph (2).

(2)(A) The Secretary shall establish a policy permitting a particular acquisition position to be specified as available only to members of the armed forces if a determination is made, under criteria specified in the policy, that a member of the armed forces is required for that position by law, is essential for performance of the duties of the position, or is necessary for another compelling reason.

(B) Not later than December 15 of each year, the Under Secretary of Defense for Acquisition and Technology shall submit to the Secretary a report that lists each acquisition position that is restricted to members of the armed forces under such policy and the recommendation of the Under Secretary as to whether such position should remain so restricted.

(c) OPPORTUNITIES FOR CIVILIANS TO QUALIFY.—The Secretary of Defense shall ensure that civilian personnel are provided the opportunity to acquire the education, training, and experience necessary to qualify for senior acquisition positions.

(d) BEST QUALIFIED.—The Secretary of Defense shall ensure that the policies established under this chapter are designed to provide for the selection of the best qualified individual for a position, consistent with other applicable law.

(e) MANAGEMENT OF WORKFORCE.—The Secretary of Defense shall ensure that the acquisition workforce is managed such that, for each fiscal year from October 1, 1991, through September 30, 1996, there is a substantial increase in the proportion of civilians (as compared to armed forces personnel) serving in critical acquisition positions in general, in program manager positions, and in division head positions over the proportion of civilians (as compared to armed forces personnel) in such positions on October 1, 1990.

(f) ASSIGNMENTS POLICY.—(1) The Secretary of Defense shall establish a policy on assigning military personnel to acquisition positions that provides for a balance between (A) the need for personnel to serve in career broadening positions, and (B) the need for requiring service in each such position for sufficient time to provide the stability necessary to effectively carry out the duties of the position and to allow for the establishment of responsibility and accountability for actions taken in the position.

(2) In implementing the policy established under paragraph (1), the Secretaries of the military departments shall provide, as appropriate, for longer lengths of assignments to acquisition positions than assignments to other positions.

(g) PERFORMANCE APPRAISALS.—The Secretary of each military department, acting through the service acquisition executive for that department, shall provide an opportunity for review and inclusion of any comments on any appraisal of the performance of a person serving in an acquisition position by a person serving in an acquisition position in the same acquisition career field.

(h) BALANCED WORKFORCE POLICY.—In the development of defense acquisition workforce policies under this chapter with respect to any civilian employees or applicants for employment, the Secretary of Defense or the Secretary of a military department (as applicable) shall, consistent with the merit system principles set out in paragraphs (1) and (2) of section 2301(b) of title 5, take into consideration the need to maintain a balanced workforce in which women and members of racial and ethnic minority groups are appropriately represented in Government service.

(Added P.L. 101–510, § 1202(a), Nov. 5, 1990, 104 Stat. 1641; amended P.L. 103–160, § 904(d), Nov. 30, 1993, 107 Stat. 1728.)

§ 1723. General education, training, and experience requirements [2]

(a) QUALIFICATION REQUIREMENTS.—The Secretary of Defense shall establish education, training, and experience requirements for

[2] Section 853 of the National Defense Authorization Act for Fiscal Year 1998 (P.L. 105–85; 111 Stat. 1851) provides:

each acquisition position, based on the level of complexity of duties carried out in the position. In establishing such requirements for positions other than critical acquisition positions designated pursuant to section 1733 of this title, the Secretary may state the requirements by categories of positions.

(b) LIMITATION ON CREDIT FOR TRAINING OR EDUCATION.—Not more than one year of a period of time spent pursuing a program of academic training or education in acquisition may be counted toward fulfilling any requirement established under this chapter for a certain period of experience.

(Added P.L. 101–510, § 1202(a), Nov. 5, 1990, 104 Stat. 1642; amended P.L. 104–201, § 1074(a)(9)(A), Sept. 23, 1996, 110 Stat. 2659.)

§ 1724. Contracting positions: qualification requirements [3]

(a) CONTRACTING OFFICERS.—The Secretary of Defense shall require that in order to qualify to serve in an acquisition position as a contracting officer with authority to award or administer contracts for amounts above the simplified acquisition threshold referred to in section 2304(g) of this title, a person must—

(1) have completed all mandatory contracting courses required for a contracting officer at the grade level, or in the position within the grade of the General Schedule (in the case of an employee), that the person is serving in;

(2) have at least two years of experience in a contracting position;

(3)(A) have received a baccalaureate degree from an accredited educational institution authorized to grant baccalaureate degrees, and (B) have completed at least 24 semester credit hours (or the equivalent) of study from an accredited institution of higher education in any of the following disciplines: accounting, business finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management; and

(4) meet such additional requirements, based on the dollar value and complexity of the contracts awarded or administered in the position, as may be established by the Secretary of Defense for the position.

(b) GS–1102 SERIES POSITIONS AND SIMILAR MILITARY POSITIONS.—The Secretary of Defense shall require that a person meet the requirements set forth in paragraph (3) of subsection (a), but not the other requirements set forth in that subsection, in order to qualify to serve in a position in the Department of Defense in—

(1) the GS–1102 occupational series; or

(2) a similar occupational specialty if the position is to be filled by a member of the armed forces.

(c) EXCEPTION.—The requirements imposed under subsection (a) or (b) shall not apply to a person for the purpose of qualifying

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SEC. 853. GUIDANCE AND STANDARDS FOR DEFENSE ACQUISITION WORKFORCE TRAINING REQUIREMENTS.

The Secretary of Defense shall develop appropriate guidance and standards to ensure that the Department of Defense will continue, where appropriate and cost-effective, to enter into contracts for the training requirements of sections 1723, 1724, and 1735 of title 10, United States Code, while maintaining appropriate control over the content and quality of such training.

[3] See footnote 2 above.

to serve in a position in which the person is serving on September 30, 2000.

(d) WAIVER.—The acquisition career program board of a military department may waive any or all of the requirements of subsections (a) and (b) with respect to an employee or member of that military department if the board certifies that the employee or member possesses significant potential for advancement to levels of greater responsibility and authority, based on demonstrated job performance and qualifying experience. With respect to each waiver granted under this subsection, the board shall set forth in a written document the rationale for its decision to waive such requirements. The document shall be submitted to and retained by the Director of Acquisition Education, Training, and Career Development.

(Added P.L. 101–510, § 1202(a), Nov. 5, 1990, 104 Stat. 1642; amended P.L. 103–35, § 101, May 31, 1993, 107 Stat. 97; P.L. 104–201, § 1074(a)(9)(B), Sept. 23, 1996, 110 Stat. 2659; P.L. 106–398, § 1[808(a)–(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–208.)

§ 1725. Office of Personnel Management approval

(a) QUALIFICATION REQUIREMENTS.—The Secretary of Defense shall submit any requirement with respect to civilian employees that is established under section 1723 or under section 1724(a)(4) of this title to the Director of the Office of Personnel Management for approval. If the Director does not disapprove the requirement within 30 days after the date on which the Director receives the requirement, the requirement is deemed to be approved by the Director.

(b) EXAMINATIONS.—The Secretary of Defense shall submit examinations to be given to civilian employees under subsection (a)(3) or (b) of section 1724 of this title to the Director of the Office of Personnel Management for approval. If the Director does not disapprove an examination within 30 days after the date on which the Director receives the examination, the examination is deemed to be approved by the Director.

(Added P.L. 101–510, § 1202(a), Nov. 5, 1990, 104 Stat. 1643.)

SUBCHAPTER III—ACQUISITION CORPS

Sec.
1731. Acquisition Corps: in general.
1732. Selection criteria and procedures.
1733. Critical acquisition positions.
1734. Career development.
1735. Education, training, and experience requirements for critical acquisition positions.
1736. Applicability.
1737. Definitions and general provisions.

§ 1731. Acquisition Corps: in general

(a) ACQUISITION CORPS.—The Secretary of Defense shall ensure that an Acquisition Corps is established for each of the military departments and one or more Corps, as he considers appropriate, for the other components of the Department of Defense. A separate Acquisition Corps may be established for each of the Navy and the Marine Corps.

(b) PROMOTION RATE FOR OFFICERS IN ACQUISITION CORPS.—The Secretary of Defense shall ensure that the qualifications of

commissioned officers selected for an Acquisition Corps are such that those officers are expected, as a group, to be promoted at a rate not less than the rate for all line (or the equivalent) officers of the same armed force (both in the zone and below the zone) in the same grade.

(c) OPM APPROVAL.—The Secretary of Defense shall submit any requirement with respect to civilian employees established under section 1732 of this title to the Director of the Office of Personnel Management for approval. If the Director does not disapprove the requirement within 30 days after the date on which the Director receives the requirement, the requirement is deemed to be approved by the Director.

(Added P.L. 101–510, § 1202(a), Nov. 5, 1990, 104 Stat. 1644.)

§ 1732. Selection criteria and procedures

(a) SELECTION CRITERIA AND PROCEDURES.—Selection for membership in an Acquisition Corps shall be made in accordance with criteria and procedures established by the Secretary of Defense. Such criteria and procedures shall be in effect on and after October 1, 1993.

(b) ELIGIBILITY CRITERIA.—Except as provided in subsections (c) and (d), only persons who meet all of the following requirements may be considered for service in the Corps:

(1)(A) In the case of an employee, the person must be currently serving in a position within grade GS–13 or above of the General Schedule.

(B) In the case of a member of the armed forces, the person must be currently serving in the grade of major or, in the case of the Navy, lieutenant commander, or a higher grade.

(C) In the case of an applicant for employment, the person must have experience in government or industry equivalent to the experience of a person in a position described in subparagraph (A) or (B), as validated by the appropriate career program management board.

(2) The person must meet the educational requirements prescribed by the Secretary of Defense. Such requirements, at a minimum, shall include both of the following:

(A) A requirement that the person—

(i) has received a baccalaureate degree at an accredited educational institution authorized to grant baccalaureate degrees, or

(ii) has been certified by the acquisition career program board of the employing military department as possessing significant potential for advancement to levels of greater responsibility and authority, based on demonstrated analytical and decisionmaking capabilities, job performance, and qualifying experience.

(B) A requirement that the person has completed—

(i) at least 24 semester credit hours (or the equivalent) of study from an accredited institution of higher education from among the following disciplines: accounting, business finance, law, contracts, purchasing, economics, industrial management, marketing, quan-

titative methods, and organization and management; or

(ii) at least 24 semester credit hours (or the equivalent) from an accredited institution of higher education in the person's career field and 12 semester credit hours (or the equivalent) from such an institution from among the disciplines listed in clause (i) or equivalent training as prescribed by the Secretary to ensure proficiency in the disciplines listed in clause (i).

(3) The person must meet experience requirements prescribed by the Secretary of Defense. Such requirements shall, at a minimum, include a requirement for at least four years of experience in an acquisition position in the Department of Defense or in a comparable position in industry or government.

(4) The person must meet such other requirements as the Secretary of Defense or the Secretary of the military department concerned prescribes by regulation.

(c) EXCEPTIONS.—(1) The requirements of subsections (b)(2)(A) and (b)(2)(B) shall not apply to any employee who, on October 1, 1991, has at least 10 years of experience in acquisition positions or in comparable positions in other government agencies or the private sector.

(2) The requirements of subsections (b)(2)(A) and (b)(2)(B) shall not apply to any employee who is serving in an acquisition position on October 1, 1991, and who does not have 10 years of experience as described in paragraph (1) if the employee passes an examination considered by the Secretary of Defense to demonstrate skills, knowledge, or abilities comparable to that of an individual who has completed at least 24 semester credit hours (or the equivalent) of study from an accredited institution of higher education from among the following disciplines: accounting, business finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management. The Secretary of Defense shall submit examinations to be given to civilian employees under this paragraph to the Director of the Office of Personnel Management for approval. If the Director does not disapprove an examination within 30 days after the date on which the Director receives the examination, the examination is deemed to be approved by the Director.

(3) Paragraph (1) of subsection (b) shall not apply to an employee who—

(A) having previously served in a position within a grade referred to in subparagraph (A) of that paragraph, is currently serving in the same position within a grade below GS–13 of the General Schedule, or in another position within that grade, by reason of a reduction in force or the closure or realignment of a military installation, or for any other reason other than by reason of an adverse personnel action for cause; and

(B) except as provided in paragraphs (1) and (2), satisfies the educational, experience, and other requirements prescribed under paragraphs (2), (3), and (4) of that subsection.

(d) WAIVER.—(1) Except as provided in paragraph (2), the acquisition career program board of a military department may waive any or all of the requirements of subsection (b) with respect to an

employee of that military department if the board certifies that the employee possesses significant potential for advancement to levels of greater responsibility and authority, based on demonstrated analytical and decisionmaking capabilities, job performance, and qualifying experience. With respect to each waiver granted under this subsection, the board shall set forth in a written document the rationale for its decision to waive such requirements. The document shall be submitted to and retained by the Director of Acquisition Education, Training, and Career Development.

(2) The acquisition career program board of a military department may not waive the requirements of subsection (b)(2)(A)(ii).

(e) MOBILITY STATEMENTS.—(1) The Secretary of Defense is authorized to require civilians in an Acquisition Corps to sign mobility statements.

(2) The Secretary of Defense shall identify which categories of civilians in an Acquisition Corps, as a condition of serving in the Corps, shall be required to sign mobility statements. The Secretary shall make available published information on such identification of categories.

(Added P.L. 101–510, § 1202(a), Nov. 5, 1990, 104 Stat. 1644; amended P.L. 102–484, § 812(e)(1), Oct. 23, 1992, 106 Stat. 2451; P.L. 103–89, § 3(b)(3)(B), Sept. 30, 1993, 107 Stat. 982; P.L. 105–261, § 811, Oct. 17, 1998, 112 Stat. 2086.)

§ 1733. Critical acquisition positions

(a) REQUIREMENT FOR CORPS MEMBER.—A critical acquisition position may be filled only by a member of an Acquisition Corps.

(b) DESIGNATION OF CRITICAL ACQUISITION POSITIONS.—(1) The Secretary of Defense shall designate the acquisition positions in the Department of Defense that are critical acquisition positions. Such positions shall include the following:

(A) Any acquisition position which—

(i) in the case of employees, is required to be filled by an employee in a position within grade GS–14 or above of the General Schedule, or in the Senior Executive Service; or

(ii) in the case of members of the armed forces, is required to be filled by a commissioned officer of the Army, Navy, Air Force, or Marine Corps who is serving in the grade of lieutenant colonel, or, in the case of the Navy, commander, or a higher grade.

(B) Other selected acquisition positions not covered by subparagraph (A), including the following:

(i) Program executive officer.

(ii) Program manager of a major defense acquisition program (as defined in section 2430 of this title) or of a significant nonmajor defense acquisition program (as defined in section 1737(a)(3) of this title).

(iii) Deputy program manager of a major defense acquisition program.

(C) Any other acquisition position of significant responsibility in which the primary duties are supervisory or management duties.

(2) The Secretary shall periodically publish a list of the positions designated under this subsection.

(Added P.L. 101–510, § 1202(a), Nov. 5, 1990, 104 Stat. 1646; amended P.L. 102–484, § 1052(22), Oct. 23, 1992, 106 Stat. 2500; P.L. 103–89, § 3(b)(3)(C), Sept. 30, 1993, 107 Stat. 983; P.L. 104–201, § 1074(a)(9)(C), Sept. 23, 1996, 110 Stat. 2659.)

§ 1734. Career development

(a) THREE-YEAR ASSIGNMENT PERIOD.—(1) Except as provided under subsection (b) and paragraph (3), the Secretary of each military department, acting through the service acquisition executive for that department, shall provide that any person who is assigned to a critical acquisition position shall be assigned to the position for not fewer than three years. Except as provided in subsection (d), the Secretary concerned may not reassign a person from such an assignment before the end of the three-year period.

(2) A person may not be assigned to a critical acquisition position unless the person executes a written agreement to remain on active duty (in the case of a member of the armed forces) or to remain in Federal service (in the case of an employee) in that position for at least three years. The service obligation contained in such a written agreement shall remain in effect unless and until waived by the Secretary concerned under subsection (b).

(3) The assignment period requirement of the first sentence of paragraph (1) is waived for any individual serving as a deputy program manager if the individual is assigned to a critical acquisition position upon completion of the individual's assignment as a deputy program manager.

(b) ASSIGNMENT PERIOD FOR PROGRAM MANAGERS.—(1) The Secretary of Defense shall prescribe in regulations—

(A) a requirement that a program manager and a deputy program manager (except as provided in paragraph (3)) of a major defense acquisition program be assigned to the position at least until completion of the major milestone that occurs closest in time to the date on which the person has served in the position for four years; and

(B) a requirement that, on and after October 1, 1991, to the maximum extent practicable, a program manager who is the replacement for a reassigned program manager arrive at the assignment location before the reassigned program manager leaves.

Except as provided in subsection (d), the Secretary concerned may not reassign a program manager or deputy program manager from such an assignment until after such major milestone has occurred.

(2) A person may not be assigned to a critical acquisition position as a program manager or deputy program manager of a major defense acquisition program unless the person executes a written agreement to remain on active duty (in the case of a member of the armed forces) or to remain in Federal service (in the case of an employee) in that position at least until completion of the first major milestone that occurs closest in time to the date on which the person has served in the position for four years. The service obligation contained in such a written agreement shall remain in effect unless and until waived by the Secretary concerned under subsection (d).

(3) The assignment period requirement under subparagraph (A) of paragraph (1) is waived for any individual serving as a deputy program manager if the individual is assigned to a critical acquisition position upon completion of the individual's assignment as a deputy program manager.

(c) MAJOR MILESTONE REGULATIONS.—(1) The Secretary of Defense shall issue regulations defining what constitutes major milestones for purposes of this section. The service acquisition executive of each military department shall establish major milestones at the beginning of a major defense acquisition program consistent with such regulations and shall use such milestones to determine the assignment period for program managers and deputy program managers under subsection (b).

(2) The regulations shall require that major milestones be clearly definable and measurable events that mark the completion of a significant phase in a major defense acquisition program and that such milestones be the same as the milestones contained in the baseline description established for the program pursuant to section 2435(a) of this title. The Secretary shall require that the major milestones as defined in the regulations be included in the Selected Acquisition Report required for such program under section 2432 of this title.

(d) WAIVER OF ASSIGNMENT PERIOD.—(1) With respect to a person assigned to a critical acquisition position, the Secretary concerned may waive the prohibition on reassignment of that person (in subsection (a)(1) or (b)(1)) and the service obligation in an agreement executed by that person (under subsection (a)(2) or (b)(2)), but only in exceptional circumstances in which a waiver is necessary for reasons permitted in regulations prescribed by the Secretary of Defense.

(2) The authority to grant such waivers may be delegated by the service acquisition executive of a military department only to the Director of Acquisition Career Management for the military department.

(3) With respect to each waiver granted under this subsection, the service acquisition executive (or his delegate) shall set forth in a written document the rationale for the decision to grant the waiver. The document shall be submitted to the Director of Acquisition Education, Training, and Career Development.

(e) ROTATION POLICY.—(1) The Secretary of Defense shall establish a policy encouraging the rotation of members of an Acquisition Corps serving in critical acquisition positions to new assignments after completion of five years of service in such positions, or, in the case of a program manager, after completion of a major program milestone, whichever is longer. Such rotation policy shall be designed to ensure opportunities for career broadening assignments and an infusion of new ideas into critical acquisition positions.

(2) The Secretary of Defense shall establish a procedure under which the assignment of each person assigned to a critical acquisition position shall be reviewed on a case-by-case basis, by the acquisition career program board of the department concerned, for the purpose of determining whether the Government and such person would be better served by a reassignment to a different position. Such a review shall be carried out with respect to each such

person not later than five years after that person is assigned to a critical position. Reviews under this subsection shall be carried out after October 1, 1995, but may be carried out before that date.

(f) CENTRALIZED JOB REFERRAL SYSTEM.—The Secretary of Defense shall prescribe regulations providing for the use of centralized lists to ensure that persons are selected for critical positions without regard to geographic location of applicants for such positions.

(g) EXCHANGE PROGRAM.—(1) The Secretary of Defense shall establish, for purposes of broadening the experience of members of each Acquisition Corps, a test program in which members of a Corps serving in a military department or Defense Agency are assigned or detailed to an acquisition position in another department or agency. Under the test program, the Secretary of Defense shall ensure that, to the maximum extent practicable, at least 5 percent of the members of the Acquisition Corps shall serve in such exchange assignments each year. The test program shall operate for not less than a period of three years.

(2) The Secretary of Defense shall submit the portion of the test program applicable to civilian employees to the Director of the Office of Personnel Management for approval. If the Director does not disapprove that portion of the test program within 30 days after the date on which the Director receives it, that portion of the test program is deemed to be approved by the Director.

(h) RESPONSIBILITY FOR ASSIGNMENTS.—The Secretary of each military department, acting through the service acquisition executive for that department, is responsible for making assignments of civilian and military members of the Acquisition Corps of that military department to critical acquisition positions.

(Added P.L. 101–510, § 1202(a), Nov. 5, 1990, 104 Stat. 1646; amended P.L. 102–484, § 812(a), (b), Oct. 23, 1992, 106 Stat. 2450; P.L. 104–201, § 1074(a)(9)(D), Sept. 23, 1996, 110 Stat. 2659.)

§ 1735. Education, training, and experience requirements for critical acquisition positions [4]

(a) QUALIFICATION REQUIREMENTS.—In establishing the education, training, and experience requirements under section 1723 of this title for critical acquisition positions, the Secretary of Defense shall, at a minimum, include the requirements set forth in subsections (b) through (e).

(b) PROGRAM MANAGERS AND DEPUTY PROGRAM MANAGERS.—Before being assigned to a position as a program manager or deputy program manager of a major defense acquisition program or a significant nonmajor defense acquisition program, a person—

(1) must have completed the program management course at the Defense Systems Management College or a management program at an accredited educational institution determined to be comparable by the Secretary of Defense;

(2) must have executed a written agreement as required in section 1734(b)(2); and

(3) in the case of—

(A) a program manager of a major defense acquisition program, must have at least eight years of experience in

[4] See footnote to section 1723.

acquisition, at least two years of which were performed in a systems program office or similar organization;

(B) a program manager of a significant nonmajor defense acquisition program, must have at least six years of experience in acquisition;

(C) a deputy program manager of a major defense acquisition program, must have at least six years of experience in acquisition, at least two years of which were performed in a systems program office or similar organization; and

(D) a deputy program manager of a significant nonmajor defense acquisition program, must have at least four years of experience in acquisition.

(c) PROGRAM EXECUTIVE OFFICERS.—Before being assigned to a position as a program executive officer, a person—

(1) must have completed the program management course at the Defense Systems Management College or a management program at an accredited educational institution in the private sector determined to be comparable by the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology;

(2) must have at least 10 years experience in an acquisition position, at least four years of which were performed while assigned to a critical acquisition position; and

(3) must have held a position as a program manager or a deputy program manager.

(d) GENERAL AND FLAG OFFICERS AND CIVILIANS IN EQUIVALENT POSITIONS.—Before a general or flag officer, or a civilian serving in a position equivalent in grade to the grade of such an officer, may be assigned to a critical acquisition position, the person must have at least 10 years experience in an acquisition position, at least four years of which were performed while assigned to a critical acquisition position.

(e) SENIOR CONTRACTING OFFICIALS.—Before a person may be assigned to a critical acquisition position as a senior contracting official, the person must have at least four years experience in contracting.

(Added P.L. 101–510, § 1202(a), Nov. 5, 1990, 104 Stat. 1648; amended P.L. 102–484, § 812(d), Oct. 23, 1992, 106 Stat. 2451; P.L. 103–160, § 904(d), Nov. 30, 1993, 107 Stat. 1728.)

§ 1736. Applicability

(a) IN GENERAL.—Except as provided in subsections (b) and (c), the qualification requirements prescribed pursuant to section 1735 shall apply to all critical acquisition positions not later than October 1, 1992.

(b) PROGRAM MANAGERS.—The qualification requirements prescribed pursuant to section 1735 shall apply with respect to program manager positions not later than October 1, 1991.

(c) EXCEPTIONS.—The qualification requirements prescribed pursuant to sections 1733(a) and 1735(a) shall not apply—

(1) to an employee who is serving in a critical acquisition position on October 1, 1992, for purposes of qualifying to continue to serve in such position; or

(2) to a person who is serving in a program manager position on October 1, 1991, for purposes of qualifying to continue to serve in such position.

(Added P.L. 101–510, § 1202(a), Nov. 5, 1990, 104 Stat. 1649.)

§ 1737. Definitions and general provisions

(a) DEFINITIONS.—In this subchapter:

(1) The term "program manager" means, with respect to a defense acquisition program, the member of an Acquisition Corps responsible for managing the program, regardless of the title given the member.

(2) The term "deputy program manager" means the person who has authority to act on behalf of the program manager in the absence of the program manager.

(3) The term "significant nonmajor defense acquisition program" means a Department of Defense acquisition program that is not a major defense acquisition program (as defined in section 2430 of this title) and that is estimated by the Secretary of Defense to require an eventual total expenditure for research, development, test, and evaluation of more than the dollar threshold set forth in section 2302(5)(A) of this title for such purposes for a major system or an eventual total expenditure for procurement of more than the dollar threshold set forth in section 2302(5)(A) of this title for such purpose for a major system.

(4) The term "program executive officer" has the meaning given such term in regulations prescribed by the Secretary of Defense.

(5) The term "senior contracting official" means a director of contracting, or a principal deputy to a director of contracting, serving in the office of the Secretary of a military department, the headquarters of a military department, the head of a Defense Agency, a subordinate command headquarters, or in a major systems or logistics contracting activity in the Department of Defense.

(b) LIMITATION.—Any civilian or military member of the Corps who does not meet the education, training, and experience requirements for a critical acquisition position established under this subchapter may not carry out the duties or exercise the authorities of that position, except for a period not to exceed six months, unless a waiver of the requirements is granted under subsection (c).

(c) WAIVER.—(1) The Secretary of each military department (acting through the service acquisition executive for that department) or the Secretary of Defense (acting through the Under Secretary of Defense for Acquisition and Technology) for Defense Agencies and other components of the Department of Defense may waive, on a case-by-case basis, the requirements established under this subchapter with respect to the assignment of an individual to a particular critical acquisition position. Such a waiver may be granted only if unusual circumstances justify the waiver or if the Secretary concerned (or official to whom the waiver authority is delegated) determines that the individual's qualifications obviate the need for meeting the education, training, and experience requirements established under this subchapter.

(2) The authority to grant such waivers may be delegated—

(A) in the case of the service acquisition executives of the military departments, only to the Director of Acquisition Career Management for the military department concerned; and

(B) in the case of the Under Secretary of Defense for Acquisition and Technology, only to the Director of Acquisition Education, Training, and Career Development.

(d) OPM APPROVAL.—The Secretary of Defense shall submit any requirement with respect to civilian employees established under this subchapter to the Director of the Office of Personnel Management for approval. If the Director does not disapprove the requirement within 30 days after the date on which the Director receives the requirement, the requirement is deemed to be approved by the Director.

(Added P.L. 101–510, § 1202(a), Nov. 5, 1990, 104 Stat. 1650; amended P.L. 102–190, § 1061(a)(8), (c), Dec. 5, 1991, 105 Stat. 1472, 1475; P.L. 103–160, § 904(d), Nov. 30, 1993, 107 Stat. 1728.)

SUBCHAPTER IV—EDUCATION AND TRAINING

Sec.
1741. Policies and programs: establishment and implementation.
1742. Intern program.
1743. Cooperative education program.
1744. Scholarship program.
1745. Additional education and training programs available to acquisition personnel.
1746. Defense acquisition university structure.

§ 1741. Policies and programs: establishment and implementation

(a) POLICIES AND PROCEDURES.—The Secretary of Defense shall establish policies and procedures for the establishment and implementation of the education and training programs authorized by this subchapter.

(b) FUNDING LEVELS.—The Under Secretary of Defense for Acquisition and Technology each year shall recommend to the Secretary of Defense the funding levels to be requested in the defense budget to implement the education and training programs under this subchapter. The Secretary of Defense shall set forth separately the funding levels requested for such programs in the Department of Defense budget justification documents submitted in support of the President's budget submitted to Congress under section 1105 of title 31.

(c) PROGRAMS.—The Secretary of each military department, acting through the service acquisition executive for that department, shall establish and implement the education and training programs authorized by this subchapter. In carrying out such requirement, the Secretary concerned shall ensure that such programs are established and implemented throughout the military department concerned and, to the maximum extent practicable, uniformly with the programs of the other military departments.

(Added P.L. 101–510, § 1202(a), Nov. 5, 1990, 104 Stat. 1651; amended P.L. 103–160, § 904(d), Nov. 30, 1993, 107 Stat. 1728.)

§ 1742. Intern program

The Secretary of Defense shall require that each military department conduct an intern program for purposes of providing highly qualified and talented individuals an opportunity for accelerated promotions, career broadening assignments, and specified training to prepare them for entry into the Acquisition Corps.

(Added P.L. 101–510, § 1202(a), Nov. 5, 1990, 104 Stat. 1651.)

§ 1743. Cooperative education program

The Secretary of Defense shall require that the Secretary of each military department conduct a department-wide cooperative education credit program under which students are employed by the Department of Defense in acquisition positions. Under the program, the Secretary shall enter into cooperative arrangements with one or more accredited institutions of higher education which provide for such institutions to grant undergraduate credit for work performed in such a position.

(Added P.L. 101–510, § 1202(a), Nov. 5, 1990, 104 Stat. 1651.)

§ 1744. Scholarship program

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a scholarship program for the purpose of qualifying personnel for acquisition positions in the Department of Defense.

(b) ELIGIBILITY.—To be eligible to participate in the scholarship program, an individual must—

(1) be accepted for enrollment or be currently enrolled as a full-time student at an accredited educational institution authorized to grant baccalaureate or graduate degrees (as appropriate);

(2) be pursuing a course of education that leads toward completion of a bachelor's, master's, or doctor's degree (as appropriate) in a qualifying field of study, as determined by the Secretary of Defense;

(3) sign an agreement described in subsection (c) under which the participant agrees to serve a period of obligated service in the Department of Defense in an acquisition position in return for payment of educational assistance as provided in the agreement; and

(4) meet such other requirements as the Secretary prescribes.

(c) AGREEMENT.—An agreement between the Secretary of Defense and a participant in the scholarship program established under this section shall be in writing, shall be signed by the participant, and shall include the following provisions:

(1) The Secretary's agreement to provide the participant with educational assistance for a specified number (from one to four) of school years during which the participant is pursuing a course of education in a qualifying field of study. The assistance may include payment of tuition, fees, books, laboratory expenses, and a stipend.

(2) The participant's agreement (A) to accept such educational assistance, (B) to maintain enrollment and attendance in the course of education until completed, and (C) while en-

rolled in such course, to maintain an acceptable level of academic standing (as prescribed by the Secretary).

(3) The participant's agreement that, after successfully completing the course of education, the participant—

(A) shall accept, if offered within such time as shall be specified in the agreement, an appointment to a full-time acquisition position in the Department of Defense that is commensurate with the participant's academic degree and experience, and that is—

(i) in the excepted service, if the participant has not previously acquired competitive status, with the right, after successful completion of 2 years of service and such other requirements as the Office of Personnel Management may prescribe, to be appointed to a position in the competitive service, notwithstanding subchapter I of chapter 33 of title 5; or

(ii) in the competitive service, if the participant has previously acquired competitive status; and

(B) if appointed under subparagraph (A), shall serve for 1 calendar year for each school year or part thereof for which the participant was provided a scholarship under the scholarship program.

(d) REPAYMENT.—(1) Any person participating in a program established under this section shall agree to pay to the United States the total amount of educational assistance provided to the person under the program if the person is voluntarily separated from service or involuntarily separated for cause from the Department of Defense before the end of the period for which the person has agreed to continue in the service of the Department of Defense in an acquisition position.

(2) If an employee fails to fulfill his agreement to pay to the Government the total amount of educational assistance provided to the person under the program, a sum equal to the amount of the educational assistance is recoverable by the Government from the employee or his estate by—

(A) setoff against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the Government; and

(B) such other method as is provided by law for the recovery of amounts owing to the Government.

(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.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be considered to require that a position be offered to a person after such person successfully completes the course of education agreed to. However, if no position described in subsection (c)(3)(A) is offered within the time specified in the agreement, the agreement shall be considered terminated.

(f) DEFINITIONS.—In this section, the terms "competitive service" and "excepted service" have the meanings provided those terms by sections 2102 and 2103, respectively, of title 5.

(Added P.L. 101–510, § 1202(a), Nov. 5, 1990, 104 Stat. 1652; amended P.L. 102–484, § 812(f), Oct. 23, 1992, 106 Stat. 2451.)

§ 1745. Additional education and training programs available to acquisition personnel

(a) TUITION REIMBURSEMENT AND TRAINING.—(1) The Secretary of Defense shall provide for tuition reimbursement and training (including a full-time course of study leading to a degree) for acquisition personnel in the Department of Defense.

(2) For civilian personnel, the reimbursement and training shall be provided under section 4107(b) of title 5 for the purposes described in that section. For purposes of such section 4107(b), there is deemed to be, until September 30, 2010, a shortage of qualified personnel to serve in acquisition positions in the Department of Defense.

(3) In the case of members of the armed forces, the limitation in section 2007(a) of this title shall not apply to tuition reimbursement and training provided for under this subsection.

(b) REPAYMENT OF STUDENT LOANS.—The Secretary of Defense may repay all or part of a student loan under section 5379 of title 5 for an employee of the Department of Defense appointed to an acquisition position.

(Added P.L. 101–510, § 1202(a), Nov. 5, 1990, 104 Stat. 1653; amended P.L. 104–106, § 1503(a)(15), Feb. 10, 1996, 110 Stat. 511; P.L. 106–65, § 925(a), Oct. 5, 1999, 113 Stat. 726; P.L. 106–398, § 1[1123], Oct. 30, 2000, 114 Stat. 1654, 1654A–317.)

§ 1746. Defense acquisition university structure [5]

(a) DEFENSE ACQUISITION UNIVERSITY STRUCTURE.—The Secretary of Defense, acting through the Under Secretary of Defense

[5] Section 1205(a) of the Defense Acquisition Workforce Improvement Act (title XII of P.L. 101–510; 104 Stat. 1658) provides:

(a) ESTABLISHMENT OF STRUCTURE.—Not later than October 1, 1991, the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology, shall prescribe regulations for the initial structure for a defense acquisition university under section 1746 of title 10, United States Code (as added by section 1202). The regulations shall include the following:

(1) Operation under a charter developed by the Secretary of Defense.

(2) Establishment of a university mission to achieve objectives formulated by the Secretary of Defense. Such objectives shall include—

(A) the achievement of more efficient and effective use of available acquisition resources by coordinating Department of Defense acquisition education and training programs and tailoring them to support the careers of personnel in acquisition positions; and

(B) the development of education, training, research, and publication capabilities in the area of acquisition.

(3) Establishment of appropriate lines of authority (including relationships between the university and each of the existing acquisition education and training institutions and activities) and accountability for the accomplishment of the university mission (as established by the Secretary).

(4) A coherent framework for the educational development of personnel in acquisition positions. Such framework shall cover courses of instruction from the basic level through intermediate and senior levels. At the senior level, the framework shall provide for a senior course as a substitute for, and equivalent to, existing senior professional military educational school courses, specifically designed for personnel serving in critical acquisition positions.

(5) Appropriate organizations, such as a policy guidance council, composed of senior Department of Defense officials, to recommend or establish policy, and a board of visitors, composed of persons selected for their preeminence in the fields of academia, business, and the defense industry, to advise on organization management, curricula, methods of instruction, facilities, and other matters of interest to the university.

for Acquisition and Technology, shall establish and maintain a defense acquisition university structure to provide for—

(1) the professional educational development and training of the acquisition workforce; and

(2) research and analysis of defense acquisition policy issues from an academic perspective.

(b) CIVILIAN FACULTY MEMBERS.—(1) The Secretary of Defense may employ as many civilians as professors, instructors, and lecturers in the defense acquisition university structure as the Secretary considers necessary.

(2) The compensation of persons employed under this subsection shall be as prescribed by the Secretary.

(3) In this subsection, the term "defense acquisition university" includes the Defense Systems Management College.

(Added P.L. 101–510, § 1202(a), Nov. 5, 1990, 104 Stat. 1653; amended P.L. 103–160, § 904(d), Nov. 30, 1993, 107 Stat. 1728; P.L. 104–106, § 1503(a)(16), Feb. 10, 1996, 110 Stat. 512.)

SUBCHAPTER V—GENERAL MANAGEMENT PROVISIONS

Sec.
1761. Management information system.
1762. Report to Secretary of Defense.
1763. Reassignment of authority.
1764. Authority to establish different minimum experience requirements.

§ 1761. Management information system

(a) IN GENERAL.—The Secretary of Defense shall prescribe regulations to ensure that the military departments and Defense Agencies establish a management information system capable of providing standardized information to the Secretary on persons serving in acquisition positions.

(b) MINIMUM INFORMATION.—The management information system shall, at a minimum, provide for—

(1) the collection and retention of information concerning the qualifications, assignments, and tenure of persons in the acquisition workforce;

(2) any exceptions and waivers granted with respect to the application of qualification, assignment, and tenure policies, procedures, and practices to such persons;

(3) relative promotion rates for military personnel in the acquisition workforce; and

(4) collection of the information necessary for the Under Secretary of Defense for Acquisition and Technology and the Secretary of Defense to comply with the requirements of section 1762 for the years in which that section is in effect.

(Added P.L. 101–510, § 1202(a), Nov. 5, 1990, 104 Stat. 1653; amended P.L. 103–160, § 904(d), Nov. 30, 1993, 107 Stat. 1728.)

§ 1762. Report to Secretary of Defense

(a) REPORT OF UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND TECHNOLOGY.—Each year the Under Secretary of Defense

(6) An appropriate centralized mechanism, under the Under Secretary of Defense for Acquisition and Technology, to control the allocation of resources for purposes of conducting mandatory acquisition courses and other training, education, and research activities to achieve the objectives of the university, such as funding for students to attend courses of instruction, funding to conduct the courses, and funding to pay instructor salaries.

for Acquisition and Technology shall transmit to the Secretary of Defense a report on the status of the defense acquisition workforce. Each annual report shall include, for each military department and Defense Agency and the Office of the Secretary of Defense, information on each category of information referred to in subsection (c).

(b) INCLUSION OF INFORMATION IN ANNUAL REPORT.—The Secretary of Defense shall include in the annual report of the Secretary to Congress under section 113(c) of this title the information in the report transmitted to the Secretary under subsection (a).

(c) INFORMATION.—The following information shall be included in the report transmitted to the Secretary under subsection (a) for the period covered by the report (which shall be shown for the Department of Defense as a whole and, with respect to paragraphs (1) through (12), separately for the Army, Navy, Air Force, Marine Corps, Defense Agencies, and Office of the Secretary of Defense):

(1) The number of acquisition positions specified under the policy established under section 1722(b)(2) of this title as being available, as of December 1 of the period covered by the report, only to members of the armed forces, set forth separately under each criterion established in the policy, together with a discussion of the types of positions that are so specified.

(2) The total number of persons serving in the Acquisition Corps as of December 1 of the period covered by the report, set forth separately for members of the armed forces and civilian employees, by grade level and by functional specialty.

(3) The total number of critical acquisition positions held as of December 1 of the period covered by the report, set forth separately for members of the armed forces and civilian employees, by grade level and by other appropriate categories (including by program manager, deputy program manager, and division head positions). For each such category, the report shall specify the number of civilians holding such positions compared to the total number of positions filled.

(4)(A) The promotion rate for officers in an acquisition corps considered for promotion from within the promotion zone, compared with the promotion rate for other officers considered for promotion from within the promotion zone in the same pay grade, shown for all officers of the same armed force and for all line (or the equivalent) officers of the same armed force.

(B) The promotion rate for officers in an acquisition corps considered for promotion from below the promotion zone, compared in the same manner as specified in subparagraph (A).

(C) If the promotion rates fail to meet the objective of section 1731(b) of this title, the Secretary of Defense shall notify Congress of such failures and of what actions the Secretary has taken or plans to take in reaction to such failures.

(5) The number of employees who met the requirement of section 1724(a)(3) or section 1724(b) of this title by passing an exam as described in section 1724(a)(3)(C), set forth separately for contracting officers and persons in the GS–1102 occupational series.

(6) The number of employees to whom the requirements of subsections (b)(2)(A) and (b)(2)(B) of section 1732 of this title did not apply because of the exceptions provided in paragraphs

(1) and (2) of section 1732(c) of this title, set forth separately by type of exception.

(7) The number of employees certified by an acquisition career program board under section 1732(b)(2)(A)(ii) of this title.

(8) The number of program managers and deputy program managers who were reassigned after completion of a major milestone occurring closest in time to the date on which the person has served in the position for four years (as required under section 1734(b) of this title), and the proportion of those reassignments to the total number of reassignments of program managers and deputy program managers, set forth separately for program managers and deputy program managers. The Secretary also shall include the average length of assignment served by program managers and deputy program managers so reassigned.

(9) The number of persons, excluding those reported under paragraph (8), in critical acquisition positions who were reassigned after a period of three years or longer (as required under section 1734(a) of this title), and the proportion of those reassignments to the total number of reassignments of persons, excluding those reported under paragraph (8), in critical acquisition positions.

(10) The number of times a waiver authority was exercised under section 1724(d), 1732(d), 1734(d), or 1736(c) of this title or any other provision of this chapter (or other provision of law) which permits the waiver of any requirement relating to the acquisition workforce, and in the case of each such authority, the reasons for exercising the authority. The Secretary may present the information provided under this paragraph by category or grouping of types of waivers and reasons.

(11) The number of persons reviewed for reassignment pursuant to section 1734(e)(2) of this title and the number of persons reassigned as a result of such reviews, together with a discussion of the criteria used to determine reassignments.

(12) The number of persons participating in each of the programs described in sections 1742 through 1745 of this title, as of December 1 of the period covered by the report.

(13) The number of persons paid a bonus under section 317 of title 37 and the number of years of service agreed to, for each such bonus, by category.

(14) Such other information and comparative data as the Secretary of Defense considers appropriate to demonstrate the performance of the Department of Defense and the performance of each military department in carrying out this chapter.

(d) EFFECTIVE DATE.—The requirements of this section shall apply to the years 1991 through 1998.

(Added P.L. 101–510, § 1202(a), Nov. 5, 1990, 104 Stat. 1654; amended P.L. 103–160, § 904(d), Nov. 30, 1993, 107 Stat. 1728.)

§ 1763. Reassignment of authority

The Secretary of Defense may assign the responsibilities under this chapter of the Under Secretary of Defense for Acquisition and Technology to any other civilian official in the Office of the Secretary of Defense who is appointed by the President by and with

the advice and consent of the Senate. If the Secretary takes action under the preceding sentence, he may authorize the Secretaries of the military departments to assign the responsibilities of a senior acquisition executive under this chapter to any other civilian official in the military department who is appointed by the President by and with the advice and consent of the Senate.

(Added P.L. 101–510, § 1202(a), Nov. 5, 1990, 104 Stat. 1656; amended P.L. 103–160, § 904(d), Nov. 30, 1993, 107 Stat. 1728; P.L. 105–85, § 1073(a)(33), Nov. 18, 1997, 111 Stat. 1902.)

§ 1764. Authority to establish different minimum experience requirements

(a) AUTHORITY.—During the six-year period beginning on October 1, 1992, and ending on September 30, 1998, the Secretary of Defense may prescribe a different minimum number of years of experience to be required for eligibility for appointment to an acquisition position referred to in subsection (b) than is required for such position under or pursuant to any provision of this chapter. Any requirement prescribed under this section for a position referred to in any paragraph of subsection (b) shall be applied uniformly to all positions referred to in such paragraph.

(b) APPLICABILITY.—This section applies to the following acquisition positions in the Department of Defense:

(1) Contracting officer.

(2) Program executive officer.

(3) Senior contracting official.

(c) OPM APPROVAL.—The Secretary of Defense shall submit any requirement with respect to civilian employees that is prescribed under this section to the Director of the Office of Personnel Management for approval if the Director does not disapprove the requirement within 30 days after the date on which the Director receives the requirement, the requirement is deemed to be approved by the Director.

(d) REPORT.—The Secretary of Defense shall notify Congress of each requirement prescribed under subsection (a) together with his reasons for prescribing such requirement.

(Added P.L. 101–510, § 1202(a), Nov. 5, 1990, 104 Stat. 1656.)

CHAPTER 88—MILITARY FAMILY PROGRAMS AND MILITARY CHILD CARE

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SUBCHAPTER I—MILITARY FAMILY PROGRAMS

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1782. Surveys of military families.
1783. Family members serving on advisory committees.
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1786. Dependent student travel within the United States.
1787. Reporting of child abuse.

§ 1781. Office of Family Policy

(a) ESTABLISHMENT.—There is in the Office of the Secretary of Defense an Office of Family Policy (hereinafter in this section referred to as the "Office"). The Office shall be under the Assistant Secretary of Defense for Force Management and Personnel.

(b) DUTIES.—The Office—

(1) shall coordinate programs and activities of the military departments to the extent that they relate to military families; and

(2) shall make recommendations to the Secretaries of the military departments with respect to programs and policies regarding military families.

(c) STAFF.—The Office shall have not less than five professional staff members.

(Added P.L. 104–106, § 568(a)(1), Feb. 10, 1996, 110 Stat. 330.)

§ 1782. Surveys of military families

(a) AUTHORITY.—The Secretary of Defense may conduct surveys of members of the armed forces on active duty or in an active status, members of the families of such members, and retired members of the armed forces to determine the effectiveness of Federal programs relating to military families and the need for new programs.

(b) RESPONSES TO BE VOLUNTARY.—Responses to surveys conducted under this section shall be voluntary.

(c) FEDERAL RECORDKEEPING REQUIREMENTS.—With respect to such surveys, family members of members of the armed forces and reserve and retired members of the armed forces shall be considered to be employees of the United States for purposes of section 3502(3)(A)(i) of title 44.

(Added P.L. 104–106, § 568(a)(1), Feb. 10, 1996, 110 Stat. 330.)

§ 1783. Family members serving on advisory committees

A committee within the Department of Defense which advises or assists the Department in the performance of any function which affects members of military families and which includes members of military families in its membership shall not be considered an advisory committee under section 3(2) of the Federal Advisory Committee Act (5 U.S.C. App.) solely because of such membership.

(Added P.L. 104–106, § 568(a)(1), Feb. 10, 1996, 110 Stat. 330.)

§ 1784. Employment opportunities for military spouses

(a) AUTHORITY.—The President shall order such measures as the President considers necessary to increase employment opportunities for spouses of members of the armed forces. Such measures may include—

(1) excepting, pursuant to section 3302 of title 5, from the competitive service positions in the Department of Defense located outside of the United States to provide employment opportunities for qualified spouses of members of the armed forces in the same geographical area as the permanent duty station of the members; and

(2) providing preference in hiring for positions in nonappropriated fund activities to qualified spouses of members of the armed forces stationed in the same geographical area as the nonappropriated fund activity for positions in wage grade UA–8 and below and equivalent positions and for positions paid at hourly rates.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations—

(1) to implement such measures as the President orders under subsection (a);

(2) to provide preference to qualified spouses of members of the armed forces in hiring for any civilian position in the Department of Defense if the spouse is among persons determined to be best qualified for the position and if the position is located in the same geographical area as the permanent duty station of the member;

(3) to ensure that notice of any vacant position in the Department of Defense is provided in a manner reasonably designed to reach spouses of members of the armed forces whose permanent duty stations are in the same geographic area as the area in which the position is located; and

(4) to ensure that the spouse of a member of the armed forces who applies for a vacant position in the Department of Defense shall, to the extent practicable, be considered for any such position located in the same geographic area as the permanent duty station of the member.

(c) STATUS OF PREFERENCE ELIGIBLES.—Nothing in this section shall be construed to provide a spouse of a member of the armed forces with preference in hiring over an individual who is a preference eligible.

(Added P.L. 104–106, § 568(a)(1), Feb. 10, 1996, 110 Stat. 331.)

§ 1785. Youth sponsorship program

(a) REQUIREMENT.—The Secretary of Defense shall require that there be at each military installation a youth sponsorship program to facilitate the integration of dependent children of members of the armed forces into new surroundings when moving to that military installation as a result of a parent's permanent change of station.

(b) DESCRIPTION OF PROGRAMS.—The program at each installation shall provide for involvement of dependent children of members presently stationed at the military installation and shall be directed primarily toward children in their preteen and teenage years.

(Added P.L. 104–106, § 568(a)(1), Feb. 10, 1996, 110 Stat. 331.)

§ 1786. Dependent student travel within the United States

Funds available to the Department of Defense for the travel and transportation of dependent students of members of the armed forces stationed overseas may be obligated for transportation allowances for travel within or between the contiguous States.

(Added P.L. 104–106, § 568(a)(1), Feb. 10, 1996, 110 Stat. 331.)

§ 1787. Reporting of child abuse

(a) IN GENERAL.—The Secretary of Defense shall request each State to provide for the reporting to the Secretary of any report the State receives of known or suspected instances of child abuse and neglect in which the person having care of the child is a member of the armed forces (or the spouse of the member).

(b) DEFINITION.—In this section, the term "child abuse and neglect" has the meaning provided in section 3(1) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5102).

(Added P.L. 104–106, § 568(a)(1), Feb. 10, 1996, 110 Stat. 332.)

SUBCHAPTER II—MILITARY CHILD CARE

Sec.
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1792. Child care employees.
1793. Parent fees.
1794. Child abuse prevention and safety at facilities.
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1798. Child care services and youth program services for dependents: financial assistance for providers.
1799. Child care services and youth program services for dependents: participation by children and youth otherwise ineligible.
1800. Definitions.

§ 1791. Funding for military child care

It is the policy of Congress that the amount of appropriated funds available during a fiscal year for operating expenses for military child development centers and programs shall be not less than the amount of child care fee receipts that are estimated to be received by the Department of Defense during that fiscal year.

(Added P.L. 104–106, § 568(a)(1), Feb. 10, 1996, 110 Stat. 332.)

§ 1792. Child care employees

(a) REQUIRED TRAINING.—(1) The Secretary of Defense shall prescribe regulations implementing a training program for child care employees. Those regulations shall apply uniformly among the military departments. Subject to paragraph (2), satisfactory completion of the training program shall be a condition of employment of any person as a child care employee.

(2) Under those regulations, the Secretary shall require that each child care employee complete the training program not later than six months after the date on which the employee is employed as a child care employee.

(3) The training program established under this subsection shall cover, at a minimum, training in the following:

(A) Early childhood development.

(B) Activities and disciplinary techniques appropriate to children of different ages.

(C) Child abuse prevention and detection.

(D) Cardiopulmonary resuscitation and other emergency medical procedures.

(b) TRAINING AND CURRICULUM SPECIALISTS.—(1) The Secretary of Defense shall require that at least one employee at each military child development center be a specialist in training and curriculum development. The Secretary shall ensure that such employees have appropriate credentials and experience.

(2) The duties of such employees shall include the following:

(A) Special teaching activities at the center.

(B) Daily oversight and instruction of other child care employees at the center.

(C) Daily assistance in the preparation of lesson plans.

(D) Assistance in the center's child abuse prevention and detection program.

(E) Advising the director of the center on the performance of other child care employees.

(3) Each employee referred to in paragraph (1) shall be an employee in a competitive service position.

(c) COMPETITIVE RATES OF PAY.—For the purpose of providing military child development centers with a qualified and stable civilian workforce, employees at a military installation who are directly involved in providing child care and are paid from nonappropriated funds—

(1) in the case of entry-level employees, shall be paid at rates of pay competitive with the rates of pay paid to other entry-level employees at that installation who are drawn from the same labor pool; and

(2) in the case of other employees, shall be paid at rates of pay substantially equivalent to the rates of pay paid to other employees at that installation with similar training, seniority, and experience.

(d) COMPETITIVE SERVICE POSITION DEFINED.—In this section, the term "competitive service position" means a position in the competitive service, as defined in section 2102(a)(1) of title 5.

(Added P.L. 104–106, § 568(a)(1), Feb. 10, 1996, 110 Stat. 333; amended P.L. 105–85, § 1073(a)(34), Nov. 18, 1997, 111 Stat. 1902; P.L. 105–261, § 1106, Oct. 17, 1998, 112 Stat. 2142.)

§ 1793. Parent fees

(a) IN GENERAL.—The Secretary of Defense shall prescribe regulations establishing fees to be charged parents for the attendance of children at military child development centers. Those regulations shall be uniform for the military departments and shall require that, in the case of children who attend the centers on a regular basis, the fees shall be based on family income.

(b) LOCAL WAIVER AUTHORITY.—The Secretary of Defense may provide authority to installation commanders, on a case-by-case basis, to establish fees for attendance of children at child development centers at rates lower than those prescribed under subsection (a) if the rates prescribed under subsection (a) are not competitive with rates at local non-military child development centers.

(Added P.L. 104–106, § 568(a)(1), Feb. 10, 1996, 110 Stat. 333.)

§ 1794. Child abuse prevention and safety at facilities

(a) CHILD ABUSE TASK FORCE.—The Secretary of Defense shall maintain a special task force to respond to allegations of widespread child abuse at a military installation. The task force shall be composed of personnel from appropriate disciplines, including, where appropriate, medicine, psychology, and childhood development. In the case of such allegations, the task force shall provide assistance to the commander of the installation, and to parents at the installation, in helping them to deal with such allegations.

(b) NATIONAL HOTLINE.—(1) The Secretary of Defense shall maintain a national telephone number for persons to use to report suspected child abuse or safety violations at a military child development center or family home day care site. The Secretary shall ensure that such reports may be made anonymously if so desired by the person making the report. The Secretary shall establish procedures for following up on complaints and information received over that number.

(2) The Secretary shall publicize the existence of the number.

(c) ASSISTANCE FROM LOCAL AUTHORITIES.—The Secretary of Defense shall prescribe regulations requiring that, in a case of allegations of child abuse at a military child development center or family home day care site, the commander of the military installation or the head of the task force established under subsection (a) shall seek the assistance of local child protective authorities if such assistance is available.

(d) SAFETY REGULATIONS.—The Secretary of Defense shall prescribe regulations on safety and operating procedures at military child development centers. Those regulations shall apply uniformly among the military departments.

(e) INSPECTIONS.—The Secretary of Defense shall require that each military child development center be inspected not less often than four times a year. Each such inspection shall be unannounced. At least one inspection a year shall be carried out by a representative of the installation served by the center, and one inspection a year shall be carried out by a representative of the major command under which that installation operates.

(f) REMEDIES FOR VIOLATIONS.—(1) Except as provided in paragraph (2), any violation of a safety, health, or child welfare law or

regulation (discovered at an inspection or otherwise) at a military child development center shall be remedied immediately.

(2) In the case of a violation that is not life threatening, the commander of the major command under which the installation concerned operates may waive the requirement that the violation be remedied immediately for a period of up to 90 days beginning on the date of the discovery of the violation. If the violation is not remedied as of the end of that 90-day period, the military child development center shall be closed until the violation is remedied. The Secretary of the military department concerned may waive the preceding sentence and authorize the center to remain open in a case in which the violation cannot reasonably be remedied within that 90-day period or in which major facility reconstruction is required.

(Added P.L. 104–106, § 568(a)(1), Feb. 10, 1996, 110 Stat. 334.)

§ 1795. Parent partnerships with child development centers

(a) PARENT BOARDS.—The Secretary of Defense shall require that there be established at each military child development center a board of parents, to be composed of parents of children attending the center. The board shall meet periodically with staff of the center and the commander of the installation served by the center for the purpose of discussing problems and concerns. The board, together with the staff of the center, shall be responsible for coordinating the parent participation program described in subsection (b).

(b) PARENT PARTICIPATION PROGRAMS.—The Secretary of Defense shall require the establishment of a parent participation program at each military child development center. As part of such program, the Secretary of Defense may establish fees for attendance of children at such a center, in the case of parents who participate in the parent participation program at that center, at rates lower than the rates that otherwise apply.

(Added P.L. 104–106, § 568(a)(1), Feb. 10, 1996, 110 Stat. 334.)

§ 1796. Subsidies for family home day care

The Secretary of Defense may use appropriated funds available for military child care purposes to provide assistance to family home day care providers so that family home day care services can be provided to members of the armed forces at a cost comparable to the cost of services provided by military child development centers. The Secretary shall prescribe regulations for the provision of such assistance.

(Added P.L. 104–106, § 568(a)(1), Feb. 10, 1996, 110 Stat. 334.)

§ 1797. Early childhood education program

The Secretary of Defense shall require that all military child development centers meet standards of operation necessary for accreditation by an appropriate national early childhood programs accrediting body.

(Added P.L. 104–106, § 568(a)(1), Feb. 10, 1996, 110 Stat. 335.)

§ 1798. Child care services and youth program services for dependents: financial assistance for providers

(a) AUTHORITY.—The Secretary of Defense may provide financial assistance to an eligible civilian provider of child care services or youth program services that furnishes such services for members of the armed forces and employees of the United States if the Secretary determines that providing such financial assistance—

(1) is in the best interest of the Department of Defense;

(2) enables supplementation or expansion of furnishing of child care services or youth program services for military installations, while not supplanting or replacing such services; and

(3) ensures that the eligible provider is able to comply, and does comply, with the regulations, policies, and standards of the Department of Defense that are applicable to the furnishing of such services.

(b) ELIGIBLE PROVIDERS.—A provider of child care services or youth program services is eligible for financial assistance under this section if the provider—

(1) is licensed to provide those services under applicable State and local law;

(2) has previously provided such services for members of the armed forces or employees of the United States; and

(3) either—

(A) is a family home day care provider; or

(B) is a provider of family child care services that—

(i) otherwise provides federally funded or sponsored child development services;

(ii) provides the services in a child development center owned and operated by a private, not-for-profit organization;

(iii) provides before-school or after-school child care program in a public school facility;

(iv) conducts an otherwise federally funded or federally sponsored school age child care or youth services program;

(v) conducts a school age child care or youth services program that is owned and operated by a not-for-profit organization; or

(vi) is a provider of another category of child care services or youth services determined by the Secretary of Defense as appropriate for meeting the needs of members of the armed forces or employees of the Department of Defense.

(c) FUNDING.—To provide financial assistance under this subsection, the Secretary of Defense may use any funds appropriated to the Department of Defense for operation and maintenance.

(d) BIENNIAL REPORT.—(1) Every two years the Secretary of Defense shall submit to Congress a report on the exercise of authority under this section. The report shall include an evaluation of the effectiveness of that authority for meeting the needs of members of the armed forces or employees of the Department of Defense for child care services and youth program services. The report may

include any recommendations for legislation that the Secretary considers appropriate to enhance the capability of the Department of Defense to meet those needs.

(2) A biennial report under this subsection may be combined with the biennial report under section 1799(d) of this title into a single report for submission to Congress. [1]

(Added P.L. 106–65, § 584(a)(1)(B), Oct. 5, 1999, 113 Stat. 634.)

§ 1799. Child care services and youth program services for dependents: participation by children and youth otherwise ineligible

(a) AUTHORITY.—The Secretary of Defense may authorize participation in child care or youth programs of the Department of Defense, to the extent of the availability of space and services, by children and youth under the age of 19 who are not dependents of members of the armed forces or of employees of the Department of Defense and are not otherwise eligible for participation in those programs.

(b) LIMITATION.—Authorization of participation in a program under subsection (a) shall be limited to situations in which that participation promotes the attainment of the objectives set forth in subsection (c), as determined by the Secretary.

(c) OBJECTIVES.—The objectives for authorizing participation in a program under subsection (a) are as follows:

(1) To support the integration of children and youth of military families into civilian communities.

(2) To make more efficient use of Department of Defense facilities and resources.

(3) To establish or support a partnership or consortium arrangement with schools and other youth services organizations serving children of members of the armed forces.

(d) BIENNIAL REPORT.—(1) Every two years the Secretary of Defense shall submit to Congress a report on the exercise of authority under this section. The report shall include an evaluation of the effectiveness of that authority for achieving the objectives set out under subsection (c). The report may include any recommendations for legislation that the Secretary considers appropriate to enhance the capability of the Department of Defense to attain those objectives.

(2) A biennial report under this subsection may be combined with the biennial report under section 1798(d) of this title into a single report for submission to Congress.

(Added P.L. 106–65, § 584(a)(1)(B), Oct. 5, 1999, 113 Stat. 635.)

§ 1800. Definitions

In this subchapter:

(1) The term "military child development center" means a facility on a military installation (or on property under the jurisdiction of the commander of a military installation) at

[1] Section 584(b) of the National Defense Authorization Act for Fiscal Year 2000 (P.L. 106–65; 113 Stat. 636) provides:

(b) FIRST BIENNIAL REPORTS.—The first biennial reports under sections 1798(d) and 1799(d) of title 10, United States Code (as added by subsection (a)), shall be submitted not later than March 31, 2002, and shall cover fiscal years 2000 and 2001.

which child care services are provided for members of the armed forces or any other facility at which such child care services are provided that is operated by the Secretary of a military department.

(2) The term "family home day care" means home-based child care services that are provided for members of the armed forces by an individual who (A) is certified by the Secretary of the military department concerned as qualified to provide those services, and (B) provides those services on a regular basis for compensation.

(3) The term "child care employee" means a civilian employee of the Department of Defense who is employed to work in a military child development center (regardless of whether the employee is paid from appropriated funds or non-appropriated funds).

(4) The term "child care fee receipts" means those non-appropriated funds that are derived from fees paid by members of the armed forces for child care services provided at military child development centers.

(Added P.L. 104–106, § 568(a)(1), Feb. 10, 1996, 110 Stat. 335; amended and redesignated P.L. 106–65, § 584(a)(1)(A), Oct. 5, 1999, 113 Stat. 634.)

[CHAPTER 89—REPEALED]

[§§ 1801 to 1805. Repealed. P.L. 104–106, § 1061(a)(1), Feb. 10, 1996, 110 Stat. 442]

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CHAPTER 101—TRAINING GENERALLY

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[§ 2001. Repealed. P.L. 103–337, § 1661(a)(3)(A), Oct. 5, 1994, 108 Stat. 2980]

§ 2002. Dependents of members of armed forces: language training

(a) Notwithstanding section 701(b) of the Foreign Service Act of 1980 (22 U.S.C. 4021(b)) or any other provision of law, and under regulations to be prescribed by the Secretary of Defense or, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary of Transportation, language training may be provided in—

(1) a facility of the Department of Defense;

(2) a facility of the Foreign Service Institute established under section 701(a) of the Foreign Service Act of 1980 (22 U.S.C. 4021(a)); or

(3) a civilian educational institution;

to a dependent of a member of the armed forces in anticipation of the member's assignment to permanent duty outside the United States.

(b) In this section, the term "dependent" has the same meaning that it has under section 401 of title 37.

(Added P.L. 89–160, § 1(1), Sept. 1, 1965, 79 Stat. 615; amended P.L. 91–278, § 2(1), (2), June 12, 1970, 84 Stat. 306; P.L. 96–465, § 2206(c), Oct. 17, 1980, 94 Stat. 2162; P.L. 97–22, § 11(a)(7), July 10, 1981, 95 Stat. 138; P.L. 98–525, § 1405(30), Oct. 19, 1984, 98 Stat. 2624; P.L. 100–180, § 1231(18)(A), Dec. 4, 1987, 101 Stat. 1161.)

§ 2003. Aeronautical rating as pilot: qualifications

To be eligible to receive an aeronautical rating as a pilot in the Army or Air Force or be designated as a naval aviator, a member of an armed force must successfully complete an undergraduate pilot course of instruction prescribed or approved by the Secretary of his military department.

(Added P.L. 92–168, § 4(1), Nov. 24, 1971, 85 Stat. 489.)

§ 2004. Detail of commissioned officers as students at law schools

(a) The Secretary of each military department may, under regulations prescribed by the Secretary of Defense, detail commissioned officers of the armed forces as students at accredited law schools, located in the United States, for a period of training leading to the degree of bachelor of laws or juris doctor. No more than twenty-five officers from each military department may commence such training in any single fiscal year.

(b) To be eligible for detail under subsection (a), an officer must be a citizen of the United States and must—

(1) have served on active duty for a period of not less than two years nor more than six years and be in the pay grade O–3 or below as of the time the training is to begin; and

(2) sign an agreement that unless sooner separated he will—

(A) complete the educational course of legal training;

(B) accept transfer or detail as a judge advocate or law specialist within the department concerned when his legal training is completed; and

(C) agree to serve on active duty following completion or other termination of training for a period of two years for each year or part thereof of his legal training under subsection (a).

(c) Officers detailed for legal training under subsection (a) shall be selected on a competitive basis by the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense. Any service obligation incurred by an officer under an agreement entered into under subsection (b) shall be in addition to any service obligation incurred by any such officer under any other provision of law or agreement.

(d) Expenses incident to the detail of officers under this section shall be paid from any funds appropriated for the military department concerned.

(e) An officer who, under regulations prescribed by the Secretary of Defense, is dropped from the program of legal training authorized by subsection (a) for deficiency in conduct or studies, or for other reasons, may be required to perform active duty in an appropriate military capacity in accordance with the active duty obligation imposed by regulations issued by the Secretary of Defense, except that in no case shall any such member be required to serve on active duty for any period in excess of one year for each year or part thereof he participated in the program.

(f) No agreement detailing any officer of the armed forces to an accredited law school may be entered into during any period that

the President is authorized by law to induct persons into the armed forces involuntarily. Nothing in this subsection shall affect any agreement entered into during any period when the President is not authorized by law to so induct persons into the armed forces.

(Added P.L. 93–155, § 817(a), Nov. 16, 1973, 87 Stat. 621; amended P.L. 101–510, § 1484(i)(3)(A), Nov. 5, 1990, 104 Stat. 1718.)

§ 2005. Advanced education assistance: active duty agreement; reimbursement requirements

(a) The Secretary concerned may require, as a condition to the Secretary providing advanced education assistance to any person, that such person enter into a written agreement with the Secretary concerned under the terms of which such person shall agree—

(1) to complete the educational requirements specified in the agreement and to serve on active duty for a period specified in the agreement;

(2) that if such person fails to complete the education requirements specified in the agreement, such person will serve on active duty for a period specified in the agreement;

(3) that if such person, voluntarily or because of misconduct, fails to complete the period of active duty specified in the agreement, or fails to fulfill any term or condition prescribed pursuant to clause (4), such person will reimburse the United States in an amount that bears the same ratio to the total cost of advanced education provided such person as the unserved portion of active duty bears to the total period of active duty such person agreed to serve; and

(4) to such other terms and conditions as the Secretary concerned may prescribe to protect the interest of the United States.

(b) The Secretary concerned shall determine the period of active duty to be served by any person for advanced education assistance to be provided such person by an armed force, except that if the period of active duty required to be served is specified under another provision of law with respect to the advanced education assistance to be provided, the period specified in the agreement referred to in subsection (a) shall be the same as the period specified in such other provision of law.

(c) Subject to the provisions of subsection (d), the obligation to reimburse the United States under an agreement described in subsection (a) is, for all purposes, a debt owing the United States.

(d) A discharge in bankruptcy under title 11 shall not release a person from an obligation to reimburse the United States required under the terms of an agreement described in subsection (a) if the final decree of the discharge in bankruptcy was issued within a period of five years after the last day of a period which such person had agreed to serve on active duty. This subsection applies to a discharge in bankruptcy in any proceeding which begins after September 30, 1978.

(e) In this section:

(1) The term "advanced education" means education or training above the secondary school level but does not include technical training provided to a member of the armed forces to

qualify such member to perform a specified military function, to workshops, or to short-term training programs.

(2) The term "assistance" means the direct provision of any course of advanced education by the Secretary concerned, reimbursement by the Secretary concerned for any course of advanced education provided by another department or agency of the Federal Government, or the payment, in whole or in part, by the Secretary concerned for any course of advanced education provided by any public or private educational institution or other entity, but such term does not include the payment for any course of advanced education which is paid for under chapter 106 or 107 of this title.

(3) The term "cost of advanced education" means those costs which are, under regulations prescribed by the Secretary concerned, directly attributable to the education of the person to whom a course of advanced education is provided, including the cost of tuition and other fees (or, if none is charged, an amount determined by the Secretary concerned to be a reasonable charge for the education provided), the cost of books, supplies, transportation, and miscellaneous expenses, and the cost of room and board, but such term does not include pay or allowances under title 37 or a stipend under section 2121 of this title.

(f) The Secretary concerned shall require, as a condition to the Secretary providing financial assistance under section 2107 or 2107a of this title to any person, that such person enter into an agreement described in subsection (a). In addition to the requirements of clauses (1) through (4) of such subsection, any agreement required by this subsection shall provide—

(1) that if such person fails to complete the education requirements specified in the agreement, or fails to fulfill any term or condition prescribed pursuant to clause (4) of such subsection, the Secretary will have the option to order such person to reimburse the United States in the manner provided for in clause (3) of such subsection without the Secretary first ordering such person to active duty as provided for under clause (2) of such subsection and sections 2107(f) and 2107a(f) of this title; and

(2) that any amount owed by such person to the United States under such agreement shall bear interest at the rate equal to the highest rate being paid by the United States on the day on which the reimbursement is determined to be due for securities having maturities of ninety days or less and shall accrue from the day on which the member is first notified of the amount due to the United States as a reimbursement under this section.

(g)(1) In any case in which the Secretary concerned determines that a person who entered into an agreement under this section failed to complete the period of active duty specified in the agreement (or failed to fulfill any other term or condition prescribed in the agreement) and, by reason of the provision of the agreement required under subsection (a)(3), may owe a debt to the United States and in which that person disputes that such a debt is owed, the Secretary shall designate a member of the armed forces or a civil-

ian employee under the jurisdiction of the Secretary to investigate the facts of the case and hear evidence presented by the person who may owe the debt and other parties, as appropriate, in order to determine the validity of the debt. That official shall report the official's findings and recommendations to the Secretary concerned. If the justification for the debt investigated includes an allegation of misconduct, the investigating official shall state in the report the official's assessment as to whether the individual behavior that resulted in the separation of the person who may owe the debt qualifies as misconduct under subsection (a)(3).

(2) The Secretary of each military department shall ensure that a member of the armed forces who may be subject to a reimbursement requirement under this section is advised of such requirement before (1) submitting a request for voluntary separation, or (2) making a decision on a course of action regarding personal involvement in administrative, nonjudicial, and judicial action resulting from alleged misconduct.

(h) The Secretary concerned may, at any time before October 1, 1998, modify an agreement described in subsection (a) to reduce the active duty service obligation specified in the agreement if the Secretary determines that it is in the best interests of the United States to do so. In such a case, the Secretary shall reduce the amount required to be reimbursed to the United States proportionately with the reduction in the period of obligated active duty service.

(Added P.L. 96–357, § 2(a), Sept. 24, 1980, 94 Stat. 1180; amended P.L. 98–94, § 1003(b)(1), § 1268(10), Sept. 24, 1983, 97 Stat. 656, 706; P.L. 100–180, § 1231(17), Dec. 4, 1987, 101 Stat. 1161; P.L. 101–510, § 534, Nov. 5, 1990, 104 Stat. 1564; P.L. 103–160, § 573(a), Nov. 30, 1993, 107 Stat. 1673.)

§ 2006. Department of Defense Education Benefits Fund

(a) There is established on the books of the Treasury a fund to be known as the Department of Defense Education Benefits Fund (hereinafter in this section referred to as the "Fund"), which shall be administered by the Secretary of the Treasury. The Fund shall be used for the accumulation of funds in order to finance armed forces education liabilities on an actuarially sound basis.

(b) In this section:

(1) The term "armed forces education liabilities" means liabilities of the armed forces for benefits under chapter 30 of title 38 and for Department of Defense benefits under chapter 1606 of this title.

(2) The term "normal cost", with respect to any period of time, means the total of the following:

(A) The present value of the future benefits payable from the Fund for amounts attributable to increased amounts of educational assistance authorized under section 3015(d) of title 38 to persons who were not on active duty on July 1, 1985, and who during such period enter on active duty.

(B) The present value of the future benefits payable from the Fund for amounts attributable to educational assistance authorized under subchapter III of chapter 30 of title 38 to persons who were not on active duty on July 1, 1985, and who during such period—

(i) enter a fourth year of active duty, in the case of persons eligible for basic educational assistance under section 3011 of such title; or

(ii) enter a period of service that will establish entitlement to such educational assistance under section 3021(b) of such title, in the case of persons eligible for basic educational assistance under section 3012 of such title.

(C) The present value of the future Department of Defense benefits payable from the Fund for educational assistance under chapter 1606 of this title to persons who during such period become entitled to such assistance.

(c) There shall be deposited into the Fund the following, which shall constitute the assets of the Fund:

(1) Amounts paid into the Fund by the Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating under subsection (g).

(2) Any amount appropriated to the Fund.

(3) Any return on investment of the assets of the Fund.

(d) The Secretary of the Treasury shall transfer from the Fund to the Secretary of Veterans Affairs such amounts as may be necessary to enable the Secretary of Veterans Affairs to make required payments of armed forces education liabilities. The Secretary of the Treasury, the Secretary of Defense, the Secretary of the Department in which the Coast Guard is operating, and the Secretary of Veterans Affairs shall enter into an agreement as to how and when, and the amounts in which, such transfers shall be made. Except for investments under subsection (h), amounts in the Fund may not be used for any purpose other than transfers as described in this subsection.

(e)(1)(A) There is established in the Department of Defense a Department of Defense Education Benefits Board of Actuaries (hereinafter in this section referred to as the "Board"). The Board shall consist of three members, who shall be appointed by the Secretary of Defense from among qualified professional actuaries who are members of the Society of Actuaries.

(B)(i) Except as provided in clause (ii), the members of the Board shall serve for a term of fifteen years, except that a member of the Board appointed to fill a vacancy occurring before the end of the term for which his predecessor was appointed shall only serve until the end of such term. A member may serve after the end of his term until his successor has taken office. A member of the Board may be removed by the Secretary of Defense for misconduct or failure to perform functions vested in the Board, and for no other reason.

(ii) Of the members of the Board who are first appointed under this paragraph, one each shall be appointed for terms ending five, ten, and fifteen years, respectively, after the date of appointment, as designated by the Secretary of Defense at the time of appointment.

(C) A member of the Board who is not otherwise an employee of the United States is entitled to receive pay at the daily equivalent of the annual rate of basic pay of the highest rate of basic pay then currently being paid under the General Schedule of sub-

chapter III of chapter 53 of title 5, for each day the member is engaged in the performance of duties vested in the Board and is entitled to travel expenses, including a per diem allowance, in accordance with section 5703 of title 5.

(2) The Board shall report to the Secretary of Defense annually on the actuarial status of the Fund and shall furnish its advice and opinion on matters referred to it by the Secretary.

(3) The Board shall review valuations of the Fund under subsection (f) and shall recommend to the President and Congress such changes as in the Board's judgment are necessary to protect the public interest and maintain the Fund on a sound actuarial basis.

(4) The Secretary shall keep, or cause to be kept, such records as necessary for determining the actuarial status of the Fund.

(f)(1) The Secretary of Defense shall carry out periodic actuarial valuations of the educational programs described in subsection (b)(1).

(2) Based on the most recent such valuation, the Secretary of Defense shall estimate the normal cost for the next fiscal year.

(3) If at the time of any such valuation there has been a change in benefits under an education program described in subsection (b)(1) that has been made since the last such valuation and that increases or decreases the present value of benefits payable from the Fund, the Secretary of Defense shall determine an amortization methodology and schedule for the liquidation of the unfunded liability (or negative unfunded liability) thus created such that the present value of the sum of the amortization payments equals the increase or decrease in the present value of such benefits.

(4) If at the time of any such valuation the Secretary of Defense determines that, based upon changes in actuarial assumptions since the last valuation, there has been an actuarial gain or loss to the Fund, the Secretary shall determine an amortization methodology and schedule for the liquidation of such gain or loss through an increase or decrease in the payments that would otherwise be made to the Fund.

(5) Based on the determinations under paragraphs (2), (3), and (4) the Secretary of Defense shall determine the amount needed to be appropriated to the Department of Defense and the Department in which the Coast Guard is operating for the next fiscal year for payments to be made to the Fund under subsection (g). The President shall include not less than the full amount so determined in the budget transmitted to Congress for the next fiscal year under section 1105 of title 31. The President may comment and make recommendations concerning any such amount.

(6) All determinations under this subsection shall be made using methods and assumptions approved by the Board of Actuaries (including assumptions of interest rates and inflation) and in accordance with generally accepted actuarial principles and practices.

(g)(1) The Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating shall pay into the Fund each month the amount that, based upon the most recent actuarial valuation of the education programs described in sub-

section (b)(1), is equal to the actual total normal cost for the preceding month.

(2) The Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating shall pay into the Fund at the beginning of each fiscal year (or as soon thereafter as appropriations are available for such purpose) the sum of the following:

(A) The amount of the payment for that year, if any, for the amortization of any liability to the Fund resulting from a change in benefits, as determined by the Secretary of Defense under subsection (f)(3).

(B) The amount of the payment for that year, if any, for the amortization of any actuarial gain or loss to the Fund, as determined by the Secretary of Defense under subsection (f)(4).

(3) Amounts paid into the Fund under this subsection shall be paid from appropriations available for the pay of members of the armed forces under the jurisdiction of the Secretary concerned. [1]

(h) The Secretary of the Treasury shall invest such portion of the Fund as is not in the judgment of the Secretary required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable to the needs of the Fund, as determined by the Secretary, and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to and form a part of the Fund.

(Added P.L. 98–525, § 706(a), Oct. 19, 1984, 98 Stat. 2568 and amended P.L. 100–26, § 7(k)(2), April 21, 1987, 101 Stat. 284; P.L. 101–189, § 1621(a)(2), (6), Nov. 29, 1989, 103 Stat. 1603; P.L. 101–510, §§ 1322(a)(2), 1474(j)(2), Nov. 5, 1990, 104 Stat. 1671, 1718; P.L. 103–337, § 1070(e)(6), Oct. 5, 1994, 108 Stat. 2859; P.L. 104–106, §§ 1501(c)(21), 1503(a)(17), Feb. 10, 1996, 110 Stat. 499, 512; P.L. 106–65, § 550, Oct. 5, 1999, 113 Stat. 611.)

§ 2007. Payment of tuition for off-duty training or education

(a) Subject to subsection (b), the Secretary of a military department may pay all or a portion of the charges of an educational institution for the tuition or expenses of a member of the armed forces enrolled in such educational institution for education or training during the member's off-duty periods.

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[1] Section 8013 of the Department of Defense Appropriations Act, 2001 (P.L. 106–259; 114 Stat. 676), provides:

SEC. 8013. (a) None of the funds appropriated by this Act shall be used to make contributions to the Department of Defense Education Benefits Fund pursuant to section 2006(g) of title 10, United States Code, representing the normal cost for future benefits under section 3015(d) of title 38, United States Code, for any member of the armed services who, on or after [Aug. 9, 2000], enlists in the armed services for a period of active duty of less than 3 years, nor shall any amounts representing the normal cost of such future benefits be transferred from the Fund by the Secretary of the Treasury to the Secretary of Veterans Affairs pursuant to section 2006(d) of title 10, United States Code; nor shall the Secretary of Veterans Affairs pay such benefits to any such member: *Provided*, That these limitations shall not apply to members in combat arms skills or to members who enlist in the armed services on or after July 1, 1989, under a program continued or established by the Secretary of Defense in fiscal year 1991 to test the cost-effective use of special recruiting incentives involving not more than 19 noncombat arms skills approved in advance by the Secretary of Defense: *Provided further*, That this subsection applies only to active components of the Army.

(b) None of the funds appropriated by this Act shall be available for the basic pay and allowances of any member of the Army participating as a full-time student and receiving benefits paid by the Secretary of Veterans Affairs from the Department of Defense Education Benefits Fund when time spent as a full-time student is credited toward completion of a service commitment: *Provided*, That this subsection shall not apply to those members who have reenlisted with this option prior to October 1, 1987: *Provided further*, That this subsection applies only to active components of the Army.

(b) In the case of a commissioned officer on active duty, the Secretary of the military department concerned may not pay charges under subsection (a) unless the officer agrees to remain on active duty for a period of at least two years after the completion of the training or education for which the charges are paid.

(c)(1) Subject to paragraphs (2) and (3), the Secretary of the Army may pay not more than 75 percent of the charges of an educational institution for the tuition or expenses of an officer in the Selected Reserve of the Army National Guard or the Army Reserve for education or training of such officer in a program leading to a baccalaureate degree.

(2) The Secretary may not pay charges under paragraph (1) for tuition or expenses of an officer unless the officer agrees to remain a member of the Selected Reserve for at least four years after completion of the education or training for which the charges are paid.[2]

(3) The Secretary may not pay charges under paragraph (1)—

(A) for a warrant officer; or

(B) for an officer on active duty or full-time National Guard duty.

(d) Subsection (c)(3) may not be construed to prohibit the Secretary of a military department from exercising any authority that the Secretary may have to pay charges of an educational institution in the case of—

(1) a warrant officer on active duty or full-time National Guard duty;

(2) a commissioned officer on full-time National Guard duty; or

(3) a commissioned officer on active duty who satisfies the condition in subsection (b) relating to an agreement to remain on active duty.

(e)(1) A member of the armed forces who is entitled to basic educational assistance under chapter 30 of title 38 may use such entitlement for purposes of paying any portion of the charges described in subsection (a) or (c) that are not paid for by the Secretary of the military department concerned under such subsection.

(2) The use of entitlement under paragraph (1) shall be governed by the provisions of section 3014(b) of title 38.

(Added P.L. 98–525, § 1401(g), Oct. 19, 1984, 98 Stat. 2618; amended P.L. 99–661, § 651(a), Nov. 14, 1986, 100 Stat. 3887; P.L. 101–510, § 1484(i)(4)(A), Nov. 5, 1990, 104 Stat. 1718; P.L. 103–160, § 632, Nov. 30, 1993, 107 Stat. 1684; P.L. 106–65, § 675, Oct. 5, 1999, 113 Stat. 675; P.L. 106–398, § 1[1602(a), (b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–358.)

§ 2008. Authority to use funds for certain educational purposes

Funds appropriated to the Department of Defense may be used to carry out construction, as defined in section 8013(3) of the Ele-

[2] Section 8019 of the Department of Defense Appropriations Act, 1996 (P.L. 104–61; 109 Stat. 655), provides:

SEC. 8019. Funds appropriated for the Department of Defense during the current fiscal year and hereafter shall be available for the payment of not more than 75 percent of the charges of a postsecondary educational institution for the tuition or expenses of an officer in the Ready Reserve of the Army National Guard or Army Reserve for education or training during his off-duty periods, except that no part of the charges may be paid unless the officer agrees to remain a member of the Ready Reserve for at least four years after completion of such training or education.

mentary and Secondary Education Act of 1965 (20 U.S.C. 7713(3)), or to carry out section 8008 of such Act (20 U.S.C. 7708), relating to the provision of assistance to certain school facilities under the impact aid program.

(Added P.L. 98–525, § 1401(g)(1), Oct. 19, 1984, 98 Stat. 2618; amended P.L. 104–106, § 2891, Feb. 10, 1996, 110 Stat. 590.)

§ 2009. Military colleges: female students

(a) Under regulations prescribed by the Secretary of Defense, any college or university designated by the Secretary of Defense as a military college shall, as a condition of maintaining such designation, provide that qualified female undergraduate students enrolled in such college or university be eligible to participate in military training at such college or university.

(b) Regulations prescribed under subsection (a) may not require a college or university, as a condition of maintaining its designation as a military college or for any other purpose, to require female undergraduate students enrolled in such college or university to participate in military training.

(Added P.L. 98–525, § 1401(g), Oct. 19, 1984, 98 Stat. 2618.)

§ 2010. Participation of developing countries in combined exercises: payment of incremental expenses

(a) The Secretary of Defense, after consultation with the Secretary of State, may pay the incremental expenses of a developing country that are incurred by that country as the direct result of participation in a bilateral or multilateral military exercise if—

(1) the exercise is undertaken primarily to enhance the security interests of the United States; and

(2) the Secretary of Defense determines that the participation by such country is necessary to the achievement of the fundamental objectives of the exercise and that those objectives cannot be achieved unless the United States provides the incremental expenses incurred by such country.

(b) The Secretary of Defense shall submit to Congress a report each year, not later than March 1, containing—

(1) a list of the developing countries for which expenses have been paid by the United States under this section during the preceding year; and

(2) the amounts expended on behalf of each government.

(c) The Secretary of Defense shall establish by regulation such accounting procedures as may be necessary to ensure that funds expended under this section are properly expended.

(d) In this section, the term "incremental expenses" means the reasonable and proper cost of the goods and services that are consumed by a developing country as a direct result of that country's participation in a bilateral or multilateral military exercise with the United States, including rations, fuel, training ammunition, and transportation. Such term does not include pay, allowances, and other normal costs of such country's personnel.

(Added P.L. 99–661, § 1321, Nov. 14, 1986, 100 Stat. 3988; amended P.L. 105–85, § 1073(a)(35), Nov. 18, 1997, 111 Stat. 1902.)

§ 2011. Special operations forces: training with friendly foreign forces

(a) AUTHORITY TO PAY TRAINING EXPENSES.—Under regulations prescribed pursuant to subsection (c), the commander of the special operations command established pursuant to section 167 of this title and the commander of any other unified or specified combatant command may pay, or authorize payment for, any of the following expenses:

(1) Expenses of training special operations forces assigned to that command in conjunction with training, and training with, armed forces and other security forces of a friendly foreign country.

(2) Expenses of deploying such special operations forces for that training.

(3) In the case of training in conjunction with a friendly developing country, the incremental expenses incurred by that country as the direct result of such training.

(b) PURPOSE OF TRAINING.—The primary purpose of the training for which payment may be made under subsection (a) shall be to train the special operations forces of the combatant command.

(c) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the administration of this section. The regulations shall require that training activities may be carried out under this section only with the prior approval of the Secretary of Defense. The regulations shall establish accounting procedures to ensure that the expenditures pursuant to this section are appropriate.

(d) DEFINITIONS.—In this section:

(1) The term "special operations forces" includes civil affairs forces and psychological operations forces.

(2) The term "incremental expenses", with respect to a developing country, means the reasonable and proper cost of rations, fuel, training ammunition, transportation, and other goods and services consumed by such country, except that the term does not include pay, allowances, and other normal costs of such country's personnel.

(e) REPORTS.—Not later than April 1 of each year, the Secretary of Defense shall submit to Congress a report regarding training during the preceding fiscal year for which expenses were paid under this section. Each report shall specify the following:

(1) All countries in which that training was conducted.

(2) The type of training conducted, including whether such training was related to counter-narcotics or counter-terrorism activities, the duration of that training, the number of members of the armed forces involved, and expenses paid.

(3) The extent of participation by foreign military forces, including the number and service affiliation of foreign military personnel involved and physical and financial contribution of each host nation to the training effort.

(4) The relationship of that training to other overseas training programs conducted by the armed forces, such as military exercise programs sponsored by the Joint Chiefs of Staff, military exercise programs sponsored by a combatant command, and military training activities sponsored by a military

department (including deployments for training, short duration exercises, and other similar unit training events).

(5) A summary of the expenditures under this section resulting from the training for which expenses were paid under this section.

(6) A discussion of the unique military training benefit to United States special operations forces derived from the training activities for which expenses were paid under this section.

(Added P.L. 102–190, § 1052(a), Dec. 5, 1991, 105 Stat. 1470; amended P.L. 104–106, § 1503(a)(18), Feb. 10, 1996, 110 Stat. 512; P.L. 105–261, § 1062, Oct. 17, 1998, 112 Stat. 2129.)

§ 2012. Support and services for eligible organizations and activities outside Department of Defense

(a) AUTHORITY TO PROVIDE SERVICES AND SUPPORT.—Under regulations prescribed by the Secretary of Defense, the Secretary of a military department may in accordance with this section authorize units or individual members of the armed forces under that Secretary's jurisdiction to provide support and services to non-Department of Defense organizations and activities specified in subsection (e), but only if—

(1) such assistance is authorized by a provision of law (other than this section); or

(2) the provision of such assistance is incidental to military training.

(b) SCOPE OF COVERED ACTIVITIES SUBJECT TO SECTION.—This section does not—

(1) apply to the provision by the Secretary concerned, under regulations prescribed by the Secretary of Defense, of customary community relations and public affairs activities conducted in accordance with Department of Defense policy; or

(2) prohibit the Secretary concerned from encouraging members of the armed forces under the Secretary's jurisdiction to provide volunteer support for community relations activities under regulations prescribed by the Secretary of Defense.

(c) REQUIREMENT FOR SPECIFIC REQUEST.—Assistance under subsection (a) may only be provided if—

(1) the assistance is requested by a responsible official of the organization to which the assistance is to be provided; and

(2) the assistance is not reasonably available from a commercial entity or (if so available) the official submitting the request for assistance certifies that the commercial entity that would otherwise provide such services has agreed to the provision of such services by the armed forces.

(d) RELATIONSHIP TO MILITARY TRAINING.—(1) Assistance under subsection (a) may only be provided if the following requirements are met:

(A) The provision of such assistance—

(i) in the case of assistance by a unit, will accomplish valid unit training requirements; and

(ii) in the case of assistance by an individual member, will involve tasks directly related to the specific military occupational specialty of the member.

(B) The provision of such assistance will not adversely affect the quality of training or otherwise interfere with the abil-

ity of a member or unit of the armed forces to perform the military functions of the member or unit.

(C) The provision of such assistance will not result in a significant increase in the cost of the training.

(2) Subparagraph (A)(i) of paragraph (1) does not apply in a case in which the assistance to be provided consists primarily of military manpower and the total amount of such assistance in the case of a particular project does not exceed 100 man-hours.

(e) ELIGIBLE ENTITIES.—The following organizations and activities are eligible for assistance under this section:

(1) Any Federal, regional, State, or local governmental entity.

(2) Youth and charitable organizations specified in section 508 of title 32.

(3) Any other entity as may be approved by the Secretary of Defense on a case-by-case basis.

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the provision of assistance under this section. The regulations shall include the following:

(1) Rules governing the types of assistance that may be provided.

(2) Procedures governing the delivery of assistance that ensure, to the maximum extent practicable, that such assistance is provided in conjunction with, rather than separate from, civilian efforts.

(3) Procedures for appropriate coordination with civilian officials to ensure that the assistance—

(A) meets a valid need; and

(B) does not duplicate other available public services.

(4) Procedures to ensure that Department of Defense resources are not applied exclusively to the program receiving the assistance.

(g) TREATMENT OF MEMBER'S PARTICIPATION IN PROVISION OF SUPPORT OR SERVICES.—(1) The Secretary of a military department may not require or request a member of the armed forces to submit for consideration by a selection board (including a promotion board, command selection board, or any other kind of selection board) evidence of the member's participation in the provision of support and services to non-Department of Defense organizations and activities under this section or the member's involvement in, or support of, other community relations and public affairs activities of the armed forces.

(2) Paragraph (1) does not prevent a selection board from considering material submitted voluntarily by a member of the armed forces which provides evidence of the participation of that member or another member in activities described in that paragraph.

(h) ADVISORY COUNCILS.—(1) The Secretary of Defense shall encourage the establishment of advisory councils at regional, State, and local levels, as appropriate, in order to obtain recommendations and guidance concerning assistance under this section from persons who are knowledgeable about regional, State, and local conditions and needs.

(2) The advisory councils should include officials from relevant military organizations, representatives of appropriate local, State,

and Federal agencies, representatives of civic and social service organizations, business representatives, and labor representatives.

(3) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to such councils.

(i) CONSTRUCTION OF PROVISION.—Nothing in this section shall be construed as authorizing—

(1) the use of the armed forces for civilian law enforcement purposes or for response to natural or manmade disasters; or

(2) the use of Department of Defense personnel or resources for any program, project, or activity that is prohibited by law.

(j) OVERSIGHT AND COST ACCOUNTING.—The Secretary of Defense shall establish a program to improve the oversight and cost accounting of training projects conducted in accordance with this section. The program shall include measures to accomplish the following:

(1) Ensure that each project that is proposed to be conducted in accordance with this section (regardless of whether additional funding from the Secretary of Defense is sought) is requested in writing, reviewed for full compliance with this section, and approved in advance of initiation by the Secretary of the military department concerned and, in the case of a project that seeks additional funding from the Secretary of Defense, by the Secretary of Defense.

(2) Ensure that each project that is conducted in accordance with this section is required to provide, within a specified period following completion of the project, an after-action report to the Secretary of Defense.

(3) Require that each application for a project to be conducted in accordance with this section include an analysis and certification that the proposed project would not result in a significant increase in the cost of training (as determined in accordance with procedures prescribed by the Secretary of Defense).

(4) Determine the total program cost for each project, including both those costs that are borne by the military departments from their own accounts and those costs that are borne by defense-wide accounts.

(5) Provide for oversight of project execution to ensure that a training project under this section is carried out in accordance with the proposal for that project as approved.

(Added P.L. 104–106, § 572(a), Feb. 10, 1996, 110 Stat. 353; amended P.L. 105–85, § 594, Nov. 18, 1997, 111 Stat. 1764; P.L. 105–261, § 525(a), Oct. 17, 1998, 112 Stat. 2014.)

§ 2013. Training at non-Government facilities

(a) AUTHORITY TO ENTER INTO AGREEMENTS.—(1) The Secretary concerned, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), may make agreements or other arrangements for the training of members of the uniformed services under the jurisdiction of that Secretary by, in, or through non-Government facilities.

(2) In this section, the term "non-Government facility" means any of the following:

(A) The government of a State or of a territory or possession of the United States, including the Commonwealth of Puerto Rico, an interstate governmental organization, and a unit, subdivision, or instrumentality of any of the foregoing.

(B) A foreign government or international organization, or instrumentality of either, which is designated by the President as eligible to provide training under this section.

(C) A medical, scientific, technical, educational, research, or professional institution, foundation, or organization.

(D) A business, commercial, or industrial firm, corporation, partnership, proprietorship, or other organization.

(E) Individuals other than civilian or military personnel of the Government.

(F) The services and property of any of the foregoing providing the training.

(b) EXPENSES.—The Secretary concerned, from appropriations or other funds available to the Secretary, may—

(1) pay all or a part of the pay of a member of a uniformed service who is selected and assigned for training under this section, for the period of training; and

(2) pay, or reimburse the member of a uniformed service for, all or a part of the necessary expenses of the training (without regard to subsections (a) and (b) of section 3324 of title 31), including among those expenses the necessary costs of the following:

(A) Travel and per diem instead of subsistence under sections 404 and 405 of title 37 and the Joint Travel Regulations for the Uniformed Services.

(B) Transportation of immediate family, household goods and personal effects, packing, crating, temporarily storing, draying, and unpacking under sections 406 and 409 of title 37 and the Joint Travel Regulations for the Uniformed Services when the estimated costs of transportation and related services are less than the estimated aggregate per diem payments for the period of training.

(C) Tuition and matriculation fees.

(D) Library and laboratory services.

(E) Purchase or rental of books, materials, and supplies.

(F) Other services or facilities directly related to the training of the member.

(c) CERTAIN EXPENSES EXCLUDED.—The expenses of training do not include membership fees except to the extent that the fee is a necessary cost directly related to the training itself or that payment of the fee is a condition precedent to undergoing the training.

(Added P.L. 104–201, § 362(a)(1), Sept. 23, 1996, 110 Stat. 2491.)

§ 2014. Administrative actions adversely affecting military training or other readiness activities

(a) CONGRESSIONAL NOTIFICATION.—Whenever an official of an Executive agency takes or proposes to take an administrative action that, as determined by the Secretary of Defense in consultation with the Chairman of the Joint Chiefs of Staff, affects training or any other readiness activity in a manner that has or would have

a significant adverse effect on the military readiness of any of the armed forces or a critical component thereof, the Secretary shall submit a written notification of the action and each significant adverse effect to the head of the Executive agency taking or proposing to take the administrative action. At the same time, the Secretary shall transmit a copy of the notification to the President, the Committee on Armed Services of the Senate, and the Committee on Armed Services of the House of Representatives.

(b) NOTIFICATION TO BE PROMPT.—(1) Subject to paragraph (2), the Secretary shall submit a written notification of an administrative action or proposed administrative action required by subsection (a) as soon as possible after the Secretary becomes aware of the action or proposed action.

(2) The Secretary shall prescribe policies and procedures to ensure that the Secretary receives information on an administrative action or proposed administrative action described in subsection (a) promptly after Department of Defense personnel receive notice of such an action or proposed action.

(c) CONSULTATION BETWEEN SECRETARY AND HEAD OF EXECUTIVE AGENCY.—Upon notification with respect to an administrative action or proposed administrative action under subsection (a), the head of the Executive agency concerned shall—

(1) respond promptly to the Secretary; and

(2) consistent with the urgency of the training or readiness activity involved and the provisions of law under which the administrative action or proposed administrative action is being taken, seek to reach an agreement with the Secretary on immediate actions to attain the objective of the administrative action or proposed administrative action in a manner which eliminates or mitigates the adverse effects of the administrative action or proposed administrative action upon the training or readiness activity.

(d) MORATORIUM.—(1) Subject to paragraph (2), upon notification with respect to an administrative action or proposed administrative action under subsection (a), the administrative action or proposed administrative action shall cease to be effective with respect to the Department of Defense until the earlier of—

(A) the end of the five-day period beginning on the date of the notification; or

(B) the date of an agreement between the head of the Executive agency concerned and the Secretary as a result of the consultations under subsection (c).

(2) Paragraph (1) shall not apply with respect to an administrative action or proposed administrative action if the head of the Executive agency concerned determines that the delay in enforcement of the administrative action or proposed administrative action will pose an actual threat of an imminent and substantial endangerment to public health or the environment.

(e) EFFECT OF LACK OF AGREEMENT.—(1) If the head of an Executive agency and the Secretary do not enter into an agreement under subsection (c)(2), the Secretary shall submit a written notification to the President who shall take final action on the matter.

(2) Not later than 30 days after the date on which the President takes final action on a matter under paragraph (1), the Presi-

dent shall submit to the committees referred to in subsection (a) a notification of the action.

(f) LIMITATION ON DELEGATION OF AUTHORITY.—The head of an Executive agency may not delegate any responsibility under this section.

(g) DEFINITION.—In this section, the term "Executive agency" has the meaning given such term in section 105 of title 5, except that the term does not include the General Accounting Office.

(Added P.L. 105–85, § 325(a), Nov. 18, 1997, 111 Stat. 1678; amended P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

CHAPTER 102—JUNIOR RESERVE OFFICERS' TRAINING CORPS

Sec.
2031. Junior Reserve Officers' Training Corps.
2032. Responsibility of the Secretaries of the military departments to maximize enrollment and enhance efficiency.
2033. Contingent funding increase.

§ 2031. Junior Reserve Officers' Training Corps

(a)(1) The Secretary of each military department shall establish and maintain a Junior Reserve Officers' Training Corps, organized into units, at public and private secondary educational institutions which apply for a unit and meet the standards and criteria prescribed pursuant to this section. The total number of units which may be established and maintained by all of the military departments under authority of this section, including those units already established on October 13, 1964, may not exceed 3,500. The President shall promulgate regulations prescribing the standards and criteria to be followed by the military departments in selecting the institutions at which units are to be established and maintained and shall provide for the fair and equitable distribution of such units throughout the Nation, except that more than one such unit may be established and maintained at any military institute.

(2) It is a purpose of the Junior Reserve Officers' Training Corps to instill in students in United States secondary educational institutions the value of citizenship, service to the United States, and personal responsibility and a sense of accomplishment.

(b) No unit may be established or maintained at an institution unless—

(1) the number of physically fit students in such unit who are in a grade above the 8th grade and are citizens or nationals of the United States, or aliens lawfully admitted to the United States for permanent residence, is not less than (A) 10 percent of the number of students enrolled in the institution who are in a grade above the 8th grade, or (B) 100, whichever is less;

(2) the institution has adequate facilities for classroom instruction, storage of arms and other equipment which may be furnished in support of the unit, and adequate drill areas at or in the immediate vicinity of the institution, as determined by the Secretary of the military department concerned;

(3) the institution provides a course of military instruction of not less than three academic years' duration, as prescribed by the Secretary of the military department concerned;

(4) the institution agrees to limit membership in the unit to students who maintain acceptable standards of academic achievement and conduct, as prescribed by the Secretary of the military department concerned; and

(5) the unit meets such other requirements as may be established by the Secretary of the military department concerned.

(c) The Secretary of the military department concerned shall, to support the Junior Reserve Officers' Training Corps program—

(1) detail officers and noncommissioned officers of an armed force under his jurisdiction to institutions having units of the Corps as administrators and instructors;

(2) provide necessary text materials, equipment, and uniforms and, to the extent considered appropriate by the Secretary concerned, such additional resources (including transportation and billeting) as may be available to support activities of the program; and

(3) establish minimum acceptable standards for performance and achievement for qualified units.

(d) Instead of, or in addition to, detailing officers and noncommissioned officers on active duty under subsection (c)(1), the Secretary of the military department concerned may authorize qualified institutions to employ, as administrators and instructors in the program, retired officers and noncommissioned officers, and members of the Fleet Reserve and Fleet Marine Corps Reserve, whose qualifications are approved by the Secretary and the institution concerned and who request such employment, subject to the following:

(1) A retired member so employed is entitled to receive the member's retired or retainer pay without reduction by reason of any additional amount paid to the member by the institution concerned. In the case of payment of any such additional amount by the institution concerned, the Secretary of the military department concerned shall pay to that institution the amount equal to one-half of the amount paid to the retired member by the institution for any period, up to a maximum of one-half of the difference between the member's retired or retainer pay for that period and the active duty pay and allowances which the member would have received for that period if on active duty. Notwithstanding the limitation in the preceding sentence, the Secretary concerned may pay to the institution more than one-half of the additional amount paid to the retired member by the institution if (as determined by the Secretary) the institution is in an educationally and economically deprived area and the Secretary determines that such action is in the national interest. Payments by the Secretary concerned under this paragraph shall be made from funds appropriated for that purpose.

(2) Notwithstanding any other provision of law, such a retired member is not, while so employed, considered to be on active duty or inactive duty training for any purpose.

(Added P.L. 88–647, § 101(1), Oct. 13, 1964, 78 Stat. 1063; amended P.L. 89–718, § 16, Nov. 2, 1966, 80 Stat. 1117; P.L. 90–83, § 3(4), Sept. 11, 1967, 81 Stat. 220; P.L. 93–165, Nov. 29, 1973, 87 Stat. 660; P.L. 94–361, § 807, July 14, 1976, 90 Stat. 933; P.L. 95–358, Sept. 8, 1978, 92 Stat. 592; P.L. 98–525, §§ 422, 1405(32), Oct. 19, 1984, 98 Stat. 2520, 2624; P.L. 100–26, § 7(i)(3), April 21, 1987, 101 Stat. 282; P.L. 102–484, § 533, Oct. 23, 1992, 106 Stat. 2411; P.L. 103–160, § 1182(g)(1), Nov. 30, 1993, 107 Stat. 1774.)

§ 2032. Responsibility of the Secretaries of the military departments to maximize enrollment and enhance efficiency

(a) COORDINATION.—The Secretary of each military department, in establishing, maintaining, transferring, and terminating Junior Reserve Officers' Training Corps units under section 2031 of this title, shall do so in a coordinated manner that is designed to maximize enrollment in the Corps and to enhance administrative efficiency in the management of the Corps.

(b) CONSIDERATION OF NEW SCHOOL OPENINGS AND CONSOLIDATIONS.—In carrying out subsection (a), the Secretary of a military department shall take into consideration—

(1) openings of new schools;

(2) consolidations of schools; and

(3) the desirability of continuing the opportunity for participation in the Corps by participants whose continued participation would otherwise be adversely affected by new school openings and consolidations of schools.

(Added P.L. 105–85, § 546(a), Nov. 18, 1997, 111 Stat. 1746.)

§ 2033. Contingent funding increase

If for any fiscal year the amount appropriated directly to the Secretary of Defense for the National Guard Challenge Program under section 509 of title 32 is in excess of $62,500,000, the Secretary of Defense shall (notwithstanding any other provision of law) make the amount in excess of $62,500,000 available for the Junior Reserve Officers' Training Corps program under section 2031 of this title, and such excess amount may not be used for any other purpose.

(Added P.L. 106–65, § 547(a)(1), Oct. 5, 1999, 113 Stat. 608; amended P.L. 106–398, § 1[577(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–140.)

CHAPTER 103—SENIOR RESERVE OFFICERS' TRAINING CORPS

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§ 2101. Definitions

In this chapter:

(1) The term "program" means the Senior Reserve Officers' Training Corps of an armed force.

(2) The term "member of the program" means a student who is enrolled in the Senior Reserve Officers' Training Corps of an armed force.

(3) The term "advanced training" means the training and instruction offered in the Senior Reserve Officers' Training Corps to students enrolled in an advanced education program beyond the baccalaureate degree level or to students in the third and fourth years of a four-year Senior Reserve Officers' Training Corps course, or the equivalent period of training in an approved two-year Senior Reserve Officers' Training Corps course (except that, in the case of a student enrolled in an academic program which has been approved by the Secretary of the military department concerned and which requires more than four academic years for completion of baccalaureate degree requirements, including elective requirements of the Senior Reserve Officers' Training Corps course, such term includes a fifth academic year or a combination of a part of a fifth academic year and summer sessions).

(Added P.L. 88–647, § 201(1), Oct. 13, 1964, 78 Stat. 1064; amended P.L. 98–94, §§ 1003(a)(1), 1268(11), Sept. 24, 1983, 97 Stat. 656, 706; P.L. 100–180, § 1231(17), Dec. 4, 1987, 101 Stat. 1161; P.L. 104–201, § 553(b), Sept. 23, 1996, 110 Stat. 2526.)

§ 2102. Establishment

(a) For the purpose of preparing selected students for commissioned service in the Army, Navy, Air Force, or Marine Corps, the Secretary of each military department, under regulations pre-

scribed by the President, may establish and maintain a Senior Reserve Officers' Training Corps program, organized into one or more units, at any accredited civilian educational institution authorized to grant baccalaureate degrees, and at any school essentially military that does not confer baccalaureate degrees, upon the request of the authorities at that institution.

(b) No unit may be established or maintained at an institution unless—

(1) the senior commissioned officer of the armed force concerned who is assigned to the program at that institution is given the academic rank of professor;

(2) the institution fulfills the terms of its agreement with the Secretary of the military department concerned; and

(3) the institution adopts, as a part of its curriculum, a four-year course of military instruction or a two-year course of advanced training of military instruction, or both, which the Secretary of the military department concerned prescribes and conducts.

(c) At those institutions where a unit of the program is established membership of students in the program shall be elective or compulsory as provided by State law or the authorities of the institution concerned.

(d) The President shall cause to be established and maintained in each State at least one unit of the program if—

(1) a unit is requested by an educational institution in the State;

(2) such request is approved by the Governor of the State in which the institution requesting the unit is located; and

(3) the Secretary of the military department concerned determines that there will be not less than 40 students enrolled in such unit and that the provisions of this section are otherwise satisfied.

(Added P.L. 88–647, § 201(1), Oct. 13, 1964, 78 Stat. 1065; amended P.L. 95–79, § 602, July 30, 1977, 91 Stat. 332.)

§ 2103. Eligibility for membership

(a) To be eligible for membership in the program a person must be a student at an institution where a unit of the Senior Reserve Officers' Training Corps is established. However, a student at an institution that does not have a unit of the Corps is eligible, if otherwise qualified, to be a member of a unit at another institution.

(b) Persons from foreign countries may be enrolled as members of the program when their enrollment is approved by the Secretary of the military department concerned under criteria approved by the Secretary of State.

(c) A medical, dental, pharmacy, veterinary, or sciences allied to medicine, student may be admitted to a unit of the program for a course of training consisting of 90 hours of instruction a year for four academic years.

(d) Under such conditions as the Secretary of the military department concerned may prescribe, a medical, dental, pharmacy, veterinary, or sciences allied to medicine, student who is a commis-

sioned officer of a reserve component of an armed force may be admitted to and trained in a unit of the program.

(e) An educational institution at which a unit of the program has been established shall give priority for enrollment in the program to students who are eligible for advanced training under section 2104 of this title.

(Added P.L. 88–647, § 201(1), Oct. 13, 1964, 78 Stat. 1065; P.L. 104–201, § 551(a)(1), Sept. 23, 1996, 110 Stat. 2525.)

§ 2104. Advanced training; eligibility for

(a) Advanced training shall be provided to eligible members of the program and, if the institution concerned so requests, to eligible applicants for membership in the program.

(b) To be eligible for continuation, or initial enrollment, in the program for advanced training, a person must—

(1) be a citizen of the United States;

(2) be selected for advanced training under procedures prescribed by the Secretary of the military department concerned;

(3) enlist in a reserve component of an armed force under the jurisdiction of the Secretary of the military department concerned for the period prescribed by the Secretary;

(4) contract, with the consent of his parent or guardian if he is a minor, with the Secretary of the military department concerned, or his designated representative, to serve for the period required by the program;

(5) agree in writing that he will accept an appointment, if offered, as a commissioned officer in the Army, Navy, Air Force, or Marine Corps, as the case may be, and that he will serve in the armed forces for the period prescribed by the Secretary;

(6) either—

(A) complete successfully—

(i) the first two years of a four-year Senior Reserve Officers' Training Corps course; or

(ii) field training or a practice cruise of a duration which is prescribed by the Secretary concerned as a preliminary requirement for admission to the advanced course; or

(B) at the discretion of the Secretary concerned, agree in writing to complete field training or a practice cruise, as prescribed by the Secretary concerned, within two years after admission to the advanced course; and

(7) execute a certificate of loyalty in such form as the Secretary of Defense prescribes or take a loyalty oath as prescribed by the Secretary.

(c) A member of the program who is ineligible under subsection (b) for advanced training shall be released from the program.

(d) This section does not apply to cadets and midshipmen appointed under section 2107, or foreign students enrolled under section 2103(b), of this title.

(Added P.L. 88–647, § 201(1), Oct. 13, 1964, 78 Stat. 1065; amended P.L. 98–94, § 1003(a)(2), Sept. 24, 1983, 97 Stat. 656; P.L. 98–525, §§ 543(a), 1401(h), Oct. 19, 1984, 98 Stat. 2530, 2619; P.L. 104–106, § 544, Feb. 10, 1996, 110 Stat. 317.)

§ 2105. Advanced training; failure to complete or to accept commission

A member of the program who is selected for advanced training under section 2104 of this title, and who does not complete the course of instruction, or who completes the course but declines to accept a commission when offered, may be ordered to active duty by the Secretary of the military department concerned to serve in his enlisted grade or rating for such period of time as the Secretary prescribes but not for more than two years.

(Added P.L. 88–647, § 201(1), Oct. 13, 1964, 78 Stat. 1066.)

§ 2106. Advanced training; commission on completion

(a) Upon satisfactorily completing the academic and military requirements of the program of advanced training, a member of the program who was selected for advanced training under section 2104 of this title may be appointed as a regular or reserve officer in the appropriate armed force in the grade of second lieutenant or ensign, even though he is under 21 years of age.

(b) The date of rank of officers appointed under this section in May or June of any year is the date of graduation of cadets or midshipmen from the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy, as the case may be, in that year. The Secretary of the military department concerned shall establish the date of rank of all other officers appointed under this section.

(c) In computing length of service for any purpose, an officer appointed under this section may not be credited with enlisted service for the period covered by his advanced training, other than any period of enlisted service performed on or after August 1, 1979, as a member of the Selected Reserve.

(Added P.L. 88–647, § 201(1), Oct. 13, 1964, 78 Stat. 1066; amended P.L. 102–484, § 517(a)(1), Oct. 23, 1992, 106 Stat. 2407; P.L. 104–201, § 507(a)(1), Sept. 23, 1996, 110 Stat. 2512.)

§ 2107. Financial assistance program for specially selected members

(a) The Secretary of the military department concerned may appoint as a cadet or midshipman, as appropriate, in the reserve of an armed force under his jurisdiction any eligible member of the program who will be under 27 years of age on June 30 of the calendar year in which he is eligible under this section for appointment as an ensign in the Navy or as a second lieutenant in the Army, Air Force, or Marine Corps, as the case may be, except that the age of any such member who has served on active duty in the armed forces may exceed such age limitation on such date by a period equal to the period such member served on active duty, but only if such member will be under 30 years of age on such date.

(b) To be eligible for appointment as a cadet or midshipman under this section a member must—

(1) be a citizen of the United States;

(2) be specially selected for the financial assistance program under procedures prescribed by the Secretary of the military department concerned;

(3) enlist in the reserve component of the armed force in which he is appointed as a cadet or midshipmen for the period

prescribed by the Secretary of the military department concerned;

(4) contract, with the consent of his parent or guardian if he is a minor, with the Secretary of the military department concerned, or his designated representative, to serve for the period required by the program; and

(5) agree in writing that, at the discretion of the Secretary of the military department concerned, he will—

(A)(i) accept an appointment, if offered, as a commissioned officer in the Army, Navy, Air Force, or Marine Corps, as the case may be, and that, if he is commissioned as a regular officer and his regular commission is terminated before the sixth anniversary of his date of rank, he will accept an appointment, if offered, in the reserve component of that armed force and not resign before that anniversary or before such other date, not beyond the eighth anniversary of the midshipman's date of rank, that the Secretary of Defense may prescribe; and

(ii) serve on active duty for four or more years;

(B)(i) accept an appointment, if offered, as a commissioned officer in the Army, Navy, Air Force, or Marine Corps, as the case may be; and

(ii) serve in a reserve component of that armed force until the eighth anniversary of the receipt of such appointment, unless otherwise extended by subsection (d) of section 2108 of this title, under such terms and conditions as shall be prescribed by the Secretary of the military department concerned; or

(C)(i) accept an appointment, if offered, as a commissioned officer in the Army, Navy, Air Force, or Marine Corps, as the case may be; and

(ii) serve in a reserve component of that armed force until at least the sixth anniversary and, at the discretion of the Secretary of Defense, up to the eighth anniversary of the receipt of such appointment, unless such appointment is otherwise extended by subsection (d) of section 2108 of this title, under such terms and conditions as may be prescribed by the Secretary of the military department concerned.

The performance of service under clause (5)(B) or (5)(C) may include periods of active duty, active duty for training, and other service in an active or inactive status in the reserve component in which appointed, except that performance of service under clause (5)(C) shall include not less than two years of active duty.

(c)(1) The Secretary of the military department concerned may provide for the payment of all expenses in his department of administering the financial assistance program under this section, including tuition, fees, books, and laboratory expenses. In the case of a student enrolled in an academic program which has been approved by the Secretary of the military department concerned and which requires more than four academic years for completion of baccalaureate degree requirements, including elective requirements of the Senior Reserve Officers' Training Corps course, financial assistance under this section may also be provided during a fifth

academic year or during a combination of a part of a fifth academic year and summer sessions. At least 50 percent of the cadets and midshipmen appointed under this section must qualify for in-State tuition rates at their respective institutions and will receive tuition benefits at that rate.

(2) The Secretary of the military department concerned may provide financial assistance, as described in paragraph (1), to a student enrolled in an advanced education program beyond the baccalaureate degree level if the student also is a cadet or midshipman in an advanced training program. Not more than 15 percent of the total number of scholarships awarded under this section in any year may be awarded under this paragraph.

(d) Upon satisfactorily completing the academic and military requirements of the four-year program, a cadet or midshipman may be appointed as a regular or reserve officer in the appropriate armed force in the grade of second lieutenant or ensign, even though he is under 21 years of age.

(e) The date of rank of officers appointed under this section in May or June of any year is the date of graduation of cadets or midshipmen from the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy, as the case may be in that year. The Secretary of the military department concerned shall establish the date of rank of all other officers appointed under this section.

(f) A cadet or midshipman who does not complete the four-year course of instruction, or who completes the course but declines to accept a commission when offered, may be ordered to active duty by the Secretary of the military department concerned to serve in his enlisted grade or rating for such period of time as the Secretary prescribes but not for more than four years.

(g) In computing length of service for any purpose, an officer appointed under this section may not be credited with service either as a cadet or midshipman or concurrent enlisted service, other than concurrent enlisted service performed on or after August 1, 1979, as a member of the Selected Reserve.

(h)(1) Not more than 29,500 cadets and midshipmen appointed under this section may be in the financial assistance programs at any one time. The Secretary of Defense shall determine the number of cadets and midshipmen appointed under this section who may be in the financial assistance programs at any one time in each military department.

(2) Of the total number of cadets appointed in the financial assistance programs under this section in any year, not less than 100 shall be designated for placement in the program of the Army for service upon commissioning in the Army National Guard, of which one-half shall be for financial assistance awarded for a period of two years and the remainder shall be for financial assistance awarded for a period of four years. A cadet designated under this paragraph who, having initially contracted for service as provided in subsection (b)(5)(A) and having received financial assistance for two years under an award providing for four years of financial assistance under this section, modifies such contract with the consent of the Secretary of the Army to provide for service as described in subsection (b)(5)(B), may be counted, for the year in

which the contract is modified, toward the number of appointments required under the preceding sentence for financial assistance awarded for a period of four years. A cadet who receives financial assistance under this paragraph and is commissioned in the Army National Guard shall perform service as provided in subsection (b)(5)(B) and may not be accepted for service on full-time active duty pursuant to the member's voluntary application until the completion of the period of service prescribed in that subsection. The Secretary of the Army shall prescribe regulations to ensure a geographical distribution of the cadets who receive financial assistance under this paragraph.

(Added P.L. 88–647, § 201(1), Oct. 13, 1964, 78 Stat. 1066; amended P.L. 92–166, § 1, Nov. 24, 1971, 85 Stat. 487; P.L. 96–357, § 1(a), (b), Sept. 24, 1980, 94 Stat. 1178; P.L. 96–513, § 511(62), Dec. 12, 1980, 94 Stat. 2925; P.L. 97–60, § 201, Oct. 14, 1981, 95 Stat. 1005; P.L. 98–94, § 1003(a)(3), (c)(1), (c)(2), Sept. 24, 1983, 97 Stat. 656, 657; P.L. 98–525, §§ 542(a), 1405(33), Oct. 19, 1984, 98 Stat. 2529, 2624; P.L. 100–180, § 510, Dec. 4, 1987, 101 Stat. 1087; P.L. 102–484, §§ 517(a)(2), 532(a), Oct. 23, 1992, 106 Stat. 2407, 2411; P.L. 104–106, § 542, Feb. 10, 1996, 110 Stat. 316; P.L. 104–201, §§ 507(a)(2), 553(a), 555(a), Sept. 23, 1996, 110 Stat. 2512, 2526, 2527; P.L. 106–65, § 545, Oct. 5, 1999, 113 Stat. 608.)

§ 2107a. Financial assistance program for specially selected members: Army Reserve and Army National Guard

(a)(1) The Secretary of the Army may appoint as a cadet in the Army Reserve or Army National Guard of the United States any eligible member of the program who is enrolled in the Advanced Course of the Army Reserve Officers' Training Corps at a military college, military junior college, or civilian institution and who will be under 27 years of age on June 30 of the calendar year in which he is eligible under this section for appointment as a second lieutenant in the Army Reserve or Army National Guard, except that the age of any such member who has served on active duty in the armed forces may exceed such age limitation on such date by a period equal to the period such member served on active duty, but only if such member will be under 30 years of age on such date.

(2) To be considered a military college or military junior college for the purposes of this section, a school must be a civilian postsecondary educational institution essentially military in nature and meet such other requirements as the Secretary of the Army may prescribe. For purposes of this section, a military junior college does not confer a baccalaureate degree.

(b) To be eligible for appointment as a cadet under this section, a member of the program must—

(1) be a citizen of the United States;

(2) be specially selected for the financial assistance program under this section under procedures prescribed by the Secretary of the Army;

(3) enlist in a reserve component of the Army for the period prescribed by the Secretary of the Army;

(4) contract, with the consent of his parent or guardian if he is a minor, with the Secretary of the Army to serve for the period required by the program;

(5) agree in writing that he will accept an appointment, if offered, as a commissioned officer in the Army Reserve or the Army National Guard of the United States; and

(6) agree in writing that he will serve in a troop program unit of the Army Reserve or Army National Guard for not less than eight years.

Performance of duty under an agreement under this subsection shall be under such terms and conditions as the Secretary of the Army may prescribe and may include periods of active duty, active duty for training, and other service in an active or inactive status in the reserve component in which appointed.

(c) The Secretary of the Army shall provide for the payment of all expenses of the Department of the Army in administering the financial assistance program under this section, including the cost of tuition, fees, books, and laboratory expenses which are incurred by members of the program appointed as cadets under this section while such members are students at a military junior college.

(d) Upon satisfactorily completing the academic and military requirements of the program, a cadet may be appointed as a reserve officer in the Army in the grade of second lieutenant, even though he is under 21 years of age.

(e) The date of rank of officers appointed under this section in May or June of any year is the date of graduation of cadets from the United States Military Academy in that year. The Secretary of the Army shall establish the date of rank of all other officers appointed under this section.

(f) A cadet who does not complete the course of instruction, or who completes the course but declines to accept a commission when offered, or who does not complete a baccalaureate degree within five years after appointment as a cadet under this section, may be ordered to active duty by the Secretary of the Army to serve in his enlisted grade for such period of time as the Secretary prescribes but not for more than four years.

(g) In computing length of service for any purpose, an officer appointed under this section may not be credited with service as a cadet or with concurrent enlisted service, other than enlisted service performed after August 1, 1979, as a member of the Selected Reserve.

(h) The Secretary of the Army shall appoint not more than 208 cadets each year under this section, to include not less than 10 cadets at each military junior college at which there are not less than 10 members of the program eligible under subsection (b) for such an appointment. At any military college at which in any year there are fewer than 10 such members, the Secretary shall appoint each such member as a cadet under this section.

(i) Cadets appointed under this section are in addition to the number appointed under section 2107 of this title.

(Added P.L. 96–357, § 1(c)(1), Sept. 24, 1980, 94 Stat. 1179; amended P.L. 102–190, § 522, Dec. 5, 1991, 105 Stat. 1362; P.L. 104–201, §§ 507(a)(3), 555(a), Sept. 23, 1996, 110 Stat. 2512, 2527; P.L. 105–85, § 1073(a)(36), Nov. 18, 1997, 111 Stat. 1902.)

§ 2108. Advanced standing; interruption of training; delay in starting obligated service; release from program

(a) The Secretary of the military department concerned may give to any enlisted member of an armed force under his jurisdiction, or any person who has served on active duty in any armed

force, such advanced standing in the program as may be justified by his education and training.

(b) In determining a member's eligibility for advanced training, the Secretary of the military department concerned may credit him with any military training that is substantially equivalent in kind to that prescribed for admission to advanced training and was received while he was taking a course of instruction in a program under the jurisdiction of another armed force or while he was on active duty in the armed forces.

(c) The Secretary of the military department concerned may excuse from a portion of the prescribed course of military instruction, including field training and practice cruises, any person found qualified on the basis of his previous education, military experience, or both.

(d) A person may become, remain, or be readmitted as, a member of the advanced training program after receiving a baccalaureate degree or completing pre-professional studies if he has not completed the course of military instruction or all field training or practice cruises prescribed by the Secretary of the military department concerned. If a member of the program has been accepted for resident graduate or professional study, the Secretary of the military department concerned may delay the commencement of that member's obligated period of active duty, and any obligated period of active duty for training or other service in an active or inactive status in a reserve component, until the member has completed that study. If a cadet appointed under section 2107a of this title has been accepted for a course of study at an accredited civilian educational institution authorized to grant baccalaureate degrees, the Secretary of the Army may delay the beginning of that member's obligated period of service in a reserve component until the member has completed such course of study.

(e) The Secretary of the military department concerned may, when he determines that the interest of the service so requires, release any person from the program and discharge him from his armed force.

(Added P.L. 88–647, § 201(1), Oct. 13, 1964, 78 Stat. 1068; amended P.L. 96–357, § 1(d), Sept. 24, 1980, 94 Stat. 1180.)

§ 2109. Practical military training

(a) For the further practical instruction of members of, and designated applicants for membership in, the program, the Secretary of the military department concerned may prescribe and conduct practical military training, in addition to field training and practice cruises prescribed under section 2104(b)(6) of this title. The Secretary concerned may require that some or all of the training prescribed under this subsection must be completed by a member before the member is commissioned.

(b) The Secretary of the military department concerned, with respect to practical military training prescribed under this section and field training and practice cruises prescribed under section 2104(b)(6) of this title, may—

(1) transport members of, and designated applicants for membership in, the program to and from the places designated for such training or practice cruises and furnish them subsist-

ence while traveling to and from those places, or, instead of furnishing them transportation and subsistence, pay them a travel allowance at the rate prescribed for cadets and midshipmen at the United States Military, Naval, and Air Force Academies for travel by the shortest usually traveled route from the places from which they are authorized to proceed to the place designated for the training or cruise and return, and pay the allowance for the return trip in advance;

(2) furnish medical attendance and supplies to members of, and designated applicants for membership in, the program while attending such training and practice cruises, and admit them to military hospitals;

(3) furnish subsistence, uniform clothing, and equipment to members of, and designated applicants for membership in, the program while attending such training or practice cruises or, instead of furnishing uniform clothing, pay them allowances at such rates as he may prescribe; and

(4) use any member of, and designated applicants for membership in, an armed force, or any employee of the department, under his jurisdiction, and such property of the United States as he considers necessary, for the training and administration of members of, and designated applicants for membership in, the program at the places designated for training or practice cruises.

(c)(1) A person who is not qualified for, and (as determined by the Secretary concerned) will not be able to become qualified for, advanced training by reason of one or more of the requirements prescribed in paragraphs (1) through (3) of section 2104(b) of this title shall not be permitted to participate in—

(A) field training or a practice cruise under section 2104(b)(6) of this title; or

(B) practical military training under subsection (a).

(2) The Secretary of the military department concerned may waive the limitation in paragraph (1) under procedures prescribed by the Secretary. Such procedures shall ensure uniform application of limitations and restrictions without regard to the reason for disqualification for advanced training.

(Added P.L. 88–647, § 201(1), Oct. 13, 1964, 78 Stat. 1068; amended P.L. 89–51, § 2, June 28, 1965, 79 Stat. 173; P.L. 89–718, § 17, Nov. 2, 1966, 80 Stat. 1118; P.L. 100–456, § 633(a), Sept. 29, 1988, 102 Stat. 1986; P.L. 104–201, § 551(a)(2), Sept. 23, 1996, 110 Stat. 2525; P.L. 105–85, § 1073(a)(37), Nov. 18, 1997, 111 Stat. 1902.)

§ 2110. Logistical support

(a) The Secretary of the military department concerned may issue to institutions having units of the program, or to the officers of the armed force concerned who are designated as accountable or responsible for such property—

(1) supplies, means of transportation including aircraft, arms and ammunition, and military textbooks and educational materials; and

(2) uniform clothing, except that he may pay monetary allowances for uniform clothing at such rate as he may prescribe.

(b) The Secretary of the military department concerned may provide, or contract with civilian flying or aviation schools or edu-

cational institutions to provide, the personnel, aircraft, supplies, facilities, services, and instruction necessary for flight instruction and orientation for properly designated members of the program.

(c) The Secretary of the military department concerned may transport members of, and designated applicants for membership in, the program to and from installations when it is necessary for them to undergo medical or other examinations or for the purposes of making visits of observation. He may also furnish them subsistence, quarters, and necessary medical care, including hospitalization, while they are at, or traveling to or from, such an installation.

(d) The Secretary of the military department concerned may authorize members of, and designated applicants for membership in, the program to participate in aerial flights in military aircraft and in indoctrination cruises in naval vessels.

(e) The Secretary of the military department concerned may authorize such expenditures as he considers necessary for the efficient maintenance of the program.

(f) The Secretary of the military department concerned shall require, from each institution to which property is issued under subsection (a), a bond or other indemnity in such amount as he considers adequate, but not less than $5,000, for the care and safekeeping of all property so issued except uniforms, expendable articles, and supplies expended in operation, maintenance, and instruction. The Secretary may accept a bond without surety if the institution to which the property is issued furnishes to him satisfactory evidence of its financial responsibility.

(Added P.L. 88–647, § 201(1), Oct. 13, 1964, 78 Stat. 1069; amended P.L. 89–718, § 18, Nov. 2, 1966, 80 Stat. 1118; P.L. 94–273, § 11(2), Apr. 21, 1976, 90 Stat. 378; P.L. 97–375, § 104(c), Dec. 21, 1982, 96 Stat. 1819.)

§ 2111. Personnel: administrators and instructors

The Secretary of the military department concerned may detail regular or reserve members of an armed force under his jurisdiction (including retired members and members of the Fleet Reserve and Fleet Marine Corps Reserve recalled to active duty with their consent) for instructional and administrative duties at educational institutions where units of the program are maintained.

(Added P.L. 88–647, § 201(1), Oct. 13, 1964, 78 Stat. 1069.)

§ 2111a. Support for senior military colleges [1]

(a) DETAIL OF OFFICERS TO SERVE AS COMMANDANT OR ASSISTANT COMMANDANT OF CADETS.—(1) Upon the request of a senior

[1] Subsections (a), (b), and (c) of section 544 of the National Defense Authorization Act for Fiscal Year 1998 (P.L. 105–85; 111 Stat. 1746) provide:

(a) DEFINITION OF SENIOR MILITARY COLLEGES.—For purposes of this section, the term "senior military colleges" means the following:

(1) Texas A&M University.
(2) Norwich University.
(3) The Virginia Military Institute.
(4) The Citadel.
(5) Virginia Polytechnic Institute and State University.
(6) North Georgia College and State University.

(b) FINDINGS.—Congress finds the following:

(1) The senior military colleges consistently have provided substantial numbers of highly qualified, long-serving leaders to the Armed Forces.

Continued

military college, the Secretary of Defense may detail an officer on the active-duty list to serve as Commandant of Cadets at that college or (in the case of a college with an Assistant Commandant of Cadets) detail an officer on the active-duty list to serve as Assistant Commandant of Cadets at that college (but not both).

(2) In the case of an officer detailed as Commandant of Cadets, the officer may, upon the request of the college, be assigned from among the Professor of Military Science, the Professor of Naval Science (if any), and the Professor of Aerospace Science (if any) at that college or may be in addition to any other officer detailed to that college in support of the program.

(3) In the case of an officer detailed as Assistant Commandant of Cadets, the officer may, upon the request of the college, be assigned from among officers otherwise detailed to duty at that college in support of the program or may be in addition to any other officer detailed to that college in support of the program.

(b) DESIGNATION OF OFFICERS AS TACTICAL OFFICERS.—Upon the request of a senior military college, the Secretary of Defense may authorize officers (other than officers covered by subsection (a)) who are detailed to duty as instructors at that college to act simultaneously as tactical officers (with or without compensation) for the Corps of Cadets at that college.

(c) DETAIL OF OFFICERS.—The Secretary of a military department shall designate officers for detail to the program at a senior military college in accordance with criteria provided by the college. An officer may not be detailed to a senior military college without the approval of that college.

(d) TERMINATION OR REDUCTION OF PROGRAM PROHIBITED.—The Secretary of Defense and the Secretaries of the military departments may not take or authorize any action to terminate or reduce a unit of the Senior Reserve Officers' Training Corps at a

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(2) The quality of the military leaders produced by the senior military colleges is, in part, the result of the rigorous military environment imposed on students attending the senior military colleges by the colleges, as well as the result of the long-standing close support relationship between the Corps of Cadets at each college and the Reserve Officer Training Corps personnel at the colleges who serve as effective leadership role models and mentors.

(3) In recognition of the quality of the young leaders produced by the senior military colleges, the Department of Defense and the military services have traditionally maintained special relationships with the colleges, including the policy to grant active duty service in the Army to graduates of the colleges who desire such service and who are recommended for such service by their ROTC professors of military science.

(4) Each of the senior military colleges has demonstrated an ability to adapt its systems and operations to changing conditions in, and requirements of, the Armed Forces without compromising the quality of leaders produced and without interruption of the close relationship between the colleges and the Department of Defense.

(c) SENSE OF CONGRESS.—In light of the findings in subsection (b), it is the sense of Congress that—

(1) the proposed initiative of the Secretary of the Army to end the commitment to active duty service for all graduates of senior military colleges who desire such service and who are recommended for such service by their ROTC professors of military science is short-sighted and contrary to the long-term interests of the Army;

(2) as they have in the past, the senior military colleges can and will continue to accommodate to changing military requirements to ensure that future graduates entering military service continue to be officers of superb quality who are quickly assimilated by the Armed Forces and fully prepared to make significant contributions to the Armed Forces through extended military careers; and

(3) decisions of the Secretary of Defense or the Secretary of a military department that fundamentally and unilaterally change the long-standing relationship of the Armed Forces with the senior military colleges are not in the best interests of the Department of Defense or the Armed Forces and are patently unfair to students who made decisions to enroll in the senior military colleges on the basis of existing Department and Armed Forces policy.

senior military college unless the termination or reduction is specifically requested by the college.

(e) ASSIGNMENT TO ACTIVE DUTY.—(1) The Secretary of the Army shall ensure that a graduate of a senior military college who desires to serve as a commissioned officer on active duty upon graduation from the college, who is medically and physically qualified for active duty, and who is recommended for such duty by the professor of military science at the college, shall be assigned to active duty.

(2) Nothing in this section shall be construed to prohibit the Secretary of the Army from requiring a member of the program who graduates from a senior military college to serve on active duty.

(f) SENIOR MILITARY COLLEGES.—The senior military colleges are the following:

(1) Texas A&M University.
(2) Norwich University.
(3) The Virginia Military Institute.
(4) The Citadel.
(5) Virginia Polytechnic Institute and State University.
(6) North Georgia College and State University.

(Added P.L. 104–106, § 545(a), Feb. 10, 1996, 110 Stat. 317; amended P.L. 105–85, § 544(d)–(f)(1), Nov. 18, 1997, 111 Stat. 1745–1746; P.L. 106–65, § 541(c), Oct. 5, 1999, 113 Stat. 607.)

§ 2111b. Senior military colleges: Department of Defense international student program

(a) PROGRAM REQUIREMENT.—The Secretary of Defense shall establish a program to facilitate the enrollment and instruction of persons from foreign countries as international students at the senior military colleges.

(b) PURPOSES.—The purposes of the program shall be—

(1) to provide a high-quality, cost-effective military-based educational experience for international students in furtherance of the military-to-military program objectives of the Department of Defense; and

(2) to enhance the educational experience and preparation of future United States military leaders through increased, extended interaction with highly qualified potential foreign military leaders.

(c) COORDINATION WITH THE SENIOR MILITARY COLLEGES.—Guidelines for implementation of the program shall be developed in coordination with the senior military colleges.

(d) RECOMMENDATIONS FOR ADMISSION OF STUDENTS UNDER THE PROGRAM.—The Secretary of Defense shall annually identify to the senior military colleges the international students who, based on criteria established by the Secretary, the Secretary recommends be considered for admission under the program. The Secretary shall identify the recommended international students to the senior military colleges as early as possible each year to enable those colleges to consider them in a timely manner in their respective admissions processes.

(e) DOD FINANCIAL SUPPORT.—An international student who is admitted to a senior military college under the program under this section is responsible for the cost of instruction at that college. The

Secretary of Defense may, from funds available to the Department of Defense other than funds available for financial assistance under section 2107a of this title, provide some or all of the costs of instruction for any such student.

(Added P.L. 106–65, § 541(a)(1), Oct. 5, 1999, 113 Stat. 606.)

CHAPTER 104—UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Sec.
2112. Establishment.
2112a. Continued operation of University.
2113. Administration of University.
2114. Students: selection; status; obligation.
2115. Graduates: limitation on number permitted to perform civilian Federal service.
2116. Military nursing research.
[2117. Repealed.]

§ 2112. Establishment [1]

(a) There is hereby authorized to be established within 25 miles of the District of Columbia a Uniformed Services University of the Health Sciences (hereinafter in this chapter referred to as the "University"), at a site or sites to be selected by the Secretary of Defense, with authority to grant appropriate advanced degrees. It shall be so organized as to graduate not less than 100 medical students annually, with the first class graduating not later than September 21, 1982.[2]

(b) Except as provided in subsection (a), the numbers of persons to be graduated from the University shall be prescribed by the Secretary of Defense. In so prescribing the number of persons to be graduated from the University, the Secretary of Defense shall institute actions necessary to ensure the maximum number of first-year enrollments in the University consistent with the academic capacity of the University and the needs of the uniformed services for medical personnel.

(c) The development of the University may be by such phases as the Secretary of Defense may prescribe subject to the requirements of subsection (a).

(Added P.L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 713; amended P.L. 96–107, § 803(a), Nov. 9, 1979, 93 Stat. 811; P.L. 96–513, § 511(63), (64), Dec. 12, 1980, 94 Stat. 2925, 2926; P.L. 104–106, § 1072(b)(1), Feb. 10, 1996, 110 Stat. 446.)

§ 2112a. Continued operation of University

(a) CLOSURE PROHIBITED.—The University may not be closed.

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[1] Section 922(b) of the National Defense Authorization Act for Fiscal Year 1995 (P.L. 103–337; 108 Stat. 2829) provides:

(b) BUDGETARY COMMITMENT TO CONTINUATION.—It is the sense of Congress that the Secretary of Defense should budget for the ongoing operation of the Uniformed Services University of the Health Sciences as an institution of professional education that is vital to the education and training each year of significant numbers of personnel of the uniformed services for careers as uniformed services health care providers.

[2] Section 1265 of the Department of Defense Authorization Act, 1984 (P.L. 98–94, 97 Stat. 704), provides:

SEC. 1265. The School of Medicine of the Uniformed Services University of the Health Sciences shall after [September 24, 1983] be known and designated as the "F. Edward Hebért School of Medicine". Any reference to such school of medicine in any law, regulation, map, document, or other record of the United States shall after such date be deemed to be a reference to such school of medicine as the F. Edward Hebért School of Medicine.

(b) PERSONNEL STRENGTH.—During the five-year period beginning on October 1, 1996, the personnel staffing levels for the University may not be reduced below the personnel staffing levels for the University as of October 1, 1993.

(Added P.L. 104–201, § 907(a)(1), Sept. 23, 1996, 110 Stat. 2620.)

§ 2113. Administration of University

(a) The business of the University shall be conducted by the Secretary of Defense with funds appropriated for and provided by the Department of Defense. To assist the Secretary in an advisory capacity, there is a Board of Regents for the University. The Board shall consist of—

(1) nine persons outstanding in the fields of health and health education who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate;

(2) the Secretary of Defense, or his designee, who shall be an ex officio member;

(3) the surgeons general of the uniformed services, who shall be ex officio members; and

(4) the person referred to in subsection (d).

(b) The term of office of each member of the Board (other than ex officio members) shall be six years except that—

(1) any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term;

(2) the terms of office of the members first taking office shall expire, as designated by the President at the time of the appointment, three at the end of two years, three at the end of four years, and three at the end of six years; and

(3) any member whose term of office has expired shall continue to serve until his successor is appointed.

(c) One of the members of the Board (other than an ex officio member) shall be designated by the President as Chairman. He shall be the presiding officer of the Board.

(d) The Secretary shall appoint a Dean of the University (hereinafter in this chapter referred to as the "Dean") who shall also serve as a nonvoting ex officio member of the Board.

(e) Members of the Board (other than ex officio members) while attending conferences or meetings or while otherwise performing their duties as members shall be entitled to receive compensation at a rate to be fixed by the Secretary, but not exceeding $100 per diem and shall also be entitled to receive an allowance for necessary travel expenses while so serving away from their place of residence.

(f)(1) The Secretary, after considering the recommendations of the Dean, shall obtain the services of such military and civilian professors, instructors, and administrative and other employees as may be necessary to operate the University. Civilian members of the faculty and staff shall be employed under salary schedules and granted retirement and other related benefits prescribed by the Secretary so as to place the employees of the University on a comparable basis with the employees of fully accredited schools of the health professions within the vicinity of the District of Columbia.

(2) The Secretary may confer academic titles, as appropriate, upon military and civilian members of the faculty.

(3) The military members of the faculty shall include a professor of military, naval, or air science as the Secretary may determine.

(4) The limitations in section 5373 of title 5 do not apply to the authority of the Secretary under paragraph (1) to prescribe salary schedules and other related benefits.

(g) The Secretary may negotiate agreements with agencies of the Federal Government to utilize on a reimbursable basis appropriate existing Federal medical resources located in or near the District of Columbia. Under such agreements the facilities concerned will retain their identities and basic missions. The Secretary may negotiate affiliation agreements with an accredited university or universities in or near the District of Columbia. Such agreements may include provisions for payments for educational services provided students participating in Department of Defense educational programs. The Secretary may enter into an agreement under which the University would become part of a national university of health sciences should such an institution be established in the vicinity of the District of Columbia.

(h) The Secretary of Defense may establish the following educational programs at the University:

(1) Postdoctoral, postgraduate, and technological institutes.

(2) A graduate school of nursing.

(3) Other schools or programs that the Secretary determines necessary in order to operate the University in a cost-effective manner.

(i) The Secretary shall also establish programs in continuing medical education for military members of the health professions to the end that high standards of health care may be maintained within the military medical services.

(j)(1) The Secretary also is authorized—

(A) to enter into contracts with, accept grants from, and make grants to the Henry M. Jackson Foundation for the Advancement of Military Medicine established under section 178 of this title, or any other nonprofit entity, for the purpose of carrying out cooperative enterprises in medical research, medical consultation, and medical education;

(B) to make available to the Henry M. Jackson Foundation for the Advancement of Military Medicine, on such terms and conditions as the Secretary determines appropriate, such space, facilities, equipment, and support services within the University as the Secretary considers necessary to accomplish cooperative enterprises undertaken by such Foundation and the University;

(C) to enter into contracts with the Henry M. Jackson Foundation for the Advancement of Military Medicine under which the Secretary may furnish the services of such professional, technical, or clerical personnel as may be necessary to fulfill cooperative enterprises undertaken by such Foundation and the University;

(D) to accept, hold, administer, invest, and spend any gift, devise, or bequest of personal property made to the University,

including any gift, devise, or bequest for the support of an academic chair, teaching, research, or demonstration project;

(E) to enter into agreements with the Henry M. Jackson Foundation for the Advancement of Military Medicine, or with any other nonprofit entity, under which scientists or other personnel of the Foundation or other entity may be utilized by the University for the purpose of enhancing the activities of the University in education, research, and technological applications of knowledge; and

(F) to accept the voluntary services of guest scholars and other persons.

(2) The Secretary may not enter into any contract with the Henry M. Jackson Foundation for the Advancement of Military Medicine, or with any other entity, if the contract would obligate the University to make outlays in advance of the enactment of budget authority for such outlays.

(3) Scientists or other medical personnel utilized by the University under an agreement described in clause (E) of paragraph (1) may be appointed to any position within the University and may be permitted to perform such duties within the University as the Secretary may approve.

(4) A person who provides voluntary services under the authority of clause (F) of paragraph (1) shall be considered to be an employee of the Federal Government for the purposes of chapter 81 of title 5, relating to compensation for work-related injuries, and to be an employee of the Federal Government for the purposes of chapter 171 of title 28, relating to tort claims. Such a person who is not otherwise employed by the Federal Government shall not be considered to be a Federal employee for any other purpose by reason of the provision of such services.

(Added P.L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 714; amended P.L. 95–589, Nov. 4, 1978, 92 Stat. 2512; P.L. 96–513, § 511(64), Dec. 12, 1980, 94 Stat. 2926; P.L. 98–36, § 3, May 27, 1983, 97 Stat. 201; P.L. 98–132, § 2(b), Oct. 17, 1983, 97 Stat. 849; P.L. 99–661, § 505, Nov. 14, 1986, 100 Stat. 3864; P.L. 101–189, § 726(a), (b)(1), Nov. 29, 1989, 103 Stat. 1480; P.L. 101–510, § 1322(a)(3), Nov. 5, 1990, 104 Stat. 1671; P.L. 104–106, § 1072(a)–(b)(2), Feb. 10, 1996, 110 Stat. 446; P.L. 106–65, § 1108, Oct. 5, 1999, 113 Stat. 778; P.L. 106–398, § 1[1087(a)(12)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291.)

§ 2114. Students: selection; status; obligation

(a) Medical students at the University shall be selected under procedures prescribed by the Secretary of Defense. In so prescribing, the Secretary shall consider the recommendations of the Board. However, selection procedures prescribed by the Secretary of Defense shall emphasize the basic requirement that students demonstrate sincere motivation and dedication to a career in the uniformed services (as defined in section 1072(1) of this title).

(b) Medical students shall be commissioned officers of a uniformed service as determined under regulations prescribed by the Secretary of Defense after consulting with the Secretary of Health and Human Services. Notwithstanding any other provision of law, they shall serve on active duty in pay grade O–1 with full pay and allowances of that grade. Upon graduation they shall be appointed in a regular component, if qualified, unless they are covered by section 2115 of this title. Medical students who graduate shall be required, except as provided in section 2115 of this title, to serve thereafter on active duty under such regulations as the Secretary

of Defense or the Secretary of Health and Human Services, as appropriate, may prescribe for not less than seven years, unless sooner released. Upon completion of, or release from, the active-duty service obligation, a member of the program who served on active-duty for less than 10 years shall serve in the Ready Reserve for the period specified in the following table:[3]

Period of Service on Active Duty	Ready Reserve Obligation
Less than 8 years	6 years
8 years or more, but less than 9	4 years
9 years or more, but less than 10	2 years

The service credit exclusions specified in section 2126 of this title shall apply to students covered by this section.

(c) A period of time spent in military intern or residency training shall not be creditable in satisfying a commissioned service obligation imposed by this section.

(d) A medical student who, under regulations prescribed by the Secretary of Defense, is dropped from the program for deficiency in conduct or studies, or for other reasons, may be required to perform active duty in an appropriate military capacity in accordance with the active duty obligation imposed by this section. In no case shall any such student be required to serve on active duty for any period in excess of a period equal to the period he participated in the program, except that in no case may any such student be required to serve on active duty less than one year.

(e)(1) The Secretary of Defense may enter into agreements with foreign military medical schools for reciprocal education programs under which students at the University receive specialized military medical instruction at the foreign military school and military medical personnel of the country of such medical school receive specialized military medical instruction at the University. Any such agreement may be made on a reimbursable basis or a nonreimbursable basis.

(2) Not more than 40 persons at any one time may receive instruction at the University under this subsection. Attendance of such persons at the University may not result in a decrease in the number of students enrolled in the University. Subsection (b) does not apply to students receiving instruction under this subsection.

(3) The Dean of the University, with the approval of the Secretary of Defense, shall determine the countries from which persons may be selected to receive instruction under this subsection and the number of persons that may be selected from each country. The Dean may establish qualifications and methods of selection and shall select those persons who will be permitted to receive instruction at the University. The qualifications established shall be comparable to those required of United States citizens.

(4) Each foreign country from which a student is permitted to receive instruction at the University under this subsection shall reimburse the United States for the cost of providing such instruction, unless such reimbursement is waived by the Secretary of De-

[3] The requirement of a Ready Reserve obligation for members of the program serving less than 10 years on active-duty applies to those who are first admitted to the Uniformed Services University of the Health Sciences after December 31, 1991. (Sec. 533(d) of P.L. 101–510.)

fense. The Secretary of Defense shall prescribe the rates for reimbursement under this paragraph.

(5) Except as the Dean determines, a person receiving instruction at the University under this subsection is subject to the same regulations governing attendance, discipline, discharge, and dismissal as a student enrolled in the University. The Secretary may prescribe regulations with respect to access to classified information by a person receiving instruction under this subsection that differ from the regulations that apply to a student enrolled in the University.

(f) In this section, the term "commissioned service obligation" means, with respect to an officer who is a graduate of the University, the period beginning on the date of the appointment of the officer in a regular component after graduation and ending on the tenth anniversary of that appointment.

(g) The Secretary of Defense shall establish such selection procedures, service obligations, and other requirements as the Secretary considers appropriate for graduate students (other than medical students) in a postdoctoral, postgraduate, or technological institute established pursuant to section 2113(h) of this title.

(h) A graduate of the University who is relieved of the graduate's active-duty service obligation under subsection (b) before the completion of that active-duty service obligation may be given, with or without the consent of the graduate, an alternative obligation in the same manner as provided in subparagraphs (A) and (B) of paragraph (1) of section 2123(e) of this title or paragraph (2) of such section for members of the Armed Forces Health Professions Scholarship and Financial Assistance program.[4]

(Added P.L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 715; amended P.L. 96–107, § 803(b), Nov. 9, 1979, 93 Stat. 812; P.L. 96–513, § 114, § 511(65), Dec. 12, 1980, 94 Stat. 2877, 2926; P.L. 98–525, § 1535, Oct. 19, 1984, 98 Stat. 2633; P.L. 101–189, § 511(a), Nov. 29, 1989, 103 Stat. 1439; P.L. 101–510, § 533(a), (b), Nov. 5, 1990, 104 Stat. 1564; P.L. 103–160, § 732(a), Nov. 30, 1993, 107 Stat. 1696; P.L. 104–106, § 1072(b)(3), Feb. 10, 1996, 110 Stat. 446; P.L. 104–201, § 741(b), Sept. 23, 1996, 110 Stat. 2599; P.L. 105–85, § 1073(a)(38), Nov. 18, 1997, 111 Stat. 1902.)

§ 2115. Graduates: limitation on number permitted to perform civilian Federal service

The Secretary of Defense may allow not more than 20 percent of the graduates of each class at the University to perform civilian Federal service for not less than seven years following the completion of their professional education in lieu of active duty in a uniformed service if the needs of the uniformed services do not require that such graduates perform active duty in a uniformed service and as long as the Secretary of Defense does not recall such persons to active duty in the uniformed services. Such persons who execute an agreement in writing to perform such civilian Federal service may

[4] As provided in section 741(c) of the National Defense Authorization Act for Fiscal Year 1997 (P.L. 104–201; 110 Stat. 2600), section 2114(h) applies only with respect to individuals who first become members of the Armed Forces Health Professions Scholarship and Financial Assistance program or students of the Uniformed Services University of the Health Sciences on or after October 1, 1996.

As provided in section 741(d)(2) of that Act, the alternative obligations provided for in section 2114(h) may be implemented by the Secretary of Defense (with the agreement of the person involved) in cases where a person is, as of October 1, 1996, serving an active-duty service obligation as a graduate of the Uniformed Services University of the Health Sciences, or incurring an active-duty service obligation as a student of the University, and is subsequently relieved of the active-duty service obligation before the completion of the obligation.

be released from active duty following the completion of their professional education. The location and type of their duty shall be determined by the Secretary of Defense after consultation with the heads of Federal agencies concerned.

(Added P.L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 716; amended P.L. 96–107, § 803(c)(1), (2), Nov. 9, 1979, 93 Stat. 812.)

§ 2116. Military nursing research

(a) DEFINITIONS.—In this section:

(1) The term "military nursing research" means research on the furnishing of care and services by nurses in the armed forces.

(2) The term "TriService Nursing Research Program" means the program of military nursing research authorized under this section.

(b) PROGRAM AUTHORIZED.—The Secretary of Defense may establish at the University a program of military nursing research.

(c) TRISERVICE RESEARCH GROUP.—The TriService Nursing Research Program shall be administered by a TriService Nursing Research Group composed of Army, Navy, and Air Force nurses who are involved in military nursing research and are designated by the Secretary concerned to serve as members of the group.

(d) DUTIES OF GROUP.—The TriService Nursing Research Group shall—

(1) develop for the Department of Defense recommended guidelines for requesting, reviewing, and funding proposed military nursing research projects; and

(2) make available to Army, Navy, and Air Force nurses and Department of Defense officials concerned with military nursing research—

(A) information about nursing research projects that are being developed or carried out in the Army, Navy, and Air Force; and

(B) expertise and information beneficial to the encouragement of meaningful nursing research.

(e) RESEARCH TOPICS.—For purposes of this section, military nursing research includes research on the following issues:

(1) Issues regarding how to improve the results of nursing care and services provided in the armed forces in time of peace.

(2) Issues regarding how to improve the results of nursing care and services provided in the armed forces in time of war.

(3) Issues regarding how to prevent complications associated with battle injuries.

(4) Issues regarding how to prevent complications associated with the transporting of patients in the military medical evacuation system.

(5) Issues regarding how to improve methods of training nursing personnel.

(6) Clinical nursing issues, including such issues as prevention and treatment of child abuse and spouse abuse.

(7) Women's health issues.

(8) Wellness issues.

(9) Preventive medicine issues.

(10) Home care management issues.

(11) Case management issues.

(Added P.L. 104–106, § 741(a), Feb. 10, 1996, 110 Stat. 384 [former 2216 repealed by § 1268(12)(A) of P.L. 98–94].)

[§ 2117. Repealed. P.L. 101–510, § 1484(b)(2)(A), Nov. 5, 1990, 104 Stat. 1716]

CHAPTER 105—ARMED FORCES HEALTH PROFESSIONS FINANCIAL ASSISTANCE PROGRAMS

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SUBCHAPTER I—HEALTH PROFESSIONS SCHOLARSHIP AND FINANCIAL ASSISTANCE PROGRAM FOR ACTIVE SERVICE

Sec.
2120. Definitions.
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[2128 to 2130. Transferred]

§ 2120. Definitions

In this subchapter:

(1) The term "program" means the Armed Forces Health Professions Scholarship and Financial Assistance program provided for in this subchapter.

(2) The term "member of the program" means a person appointed a commissioned officer in a reserve component of the armed forces who is enrolled in the Armed Forces Health Professions Scholarship and Financial Assistance program.

(3) The term "course of study" means education received at an accredited college, university, or institution in medicine, dentistry, or other health profession, leading, respectively, to a degree related to the health professions as determined under regulations prescribed by the Secretary of Defense.

(4) The term "specialized training" means advanced training in a health professions specialty received in an accredited program that is beyond the basic education required for appointment as a commissioned officer with a designation as a health professional.

(Added P.L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 717; amended P.L. 98–94, § 1268(13), Sept. 24, 1983, 97 Stat. 706; P.L. 100–26, § 7(k)(2), April 21, 1987, 101 Stat. 284; P.L. 100–180, § 711(a)(2), Dec. 4, 1987, 101 Stat. 1108; P.L. 101–189, § 725(a), (h)(1), Nov. 29, 1989, 103 Stat. 1478, 1480.)

§ 2121. Establishment

(a) For the purpose of obtaining adequate numbers of commissioned officers on active duty who are qualified in the various health professions, the Secretary of each military department, under regulations prescribed by the Secretary of Defense, may

establish and maintain a health professions scholarship and financial assistance program for his department.

(b) The program shall consist of courses of study and specialized training in designated health professions, with obligatory periods of military training.

(c) Persons participating in the program shall be commissioned officers in reserve components of the armed forces. Members pursuing a course of study shall serve on active duty in pay grade O–1 with full pay and allowances of that grade for a period of 45 days during each year of participation in the program. Members pursuing specialized training shall serve on active duty in a pay grade commensurate with their educational level, as determined by appointment under section 12207 of this title, with full pay and allowances of that grade for a period of 14 days during each year of participation in the program. They shall be detailed as students at accredited civilian institutions, located in the United States or Puerto Rico, for the purpose of acquiring knowledge or training in a designated health profession. In addition, members of the program shall, under regulations prescribed by the Secretary of Defense, receive military and professional training and instruction.

(d) Except when serving on active duty pursuant to subsection (c), a member of the program shall be entitled to a stipend at the rate of $579 per month. That rate shall be increased annually by the Secretary of Defense effective on July 1 of each year by an amount (rounded to the next highest multiple of $1) equal to—

(1) the amount of such stipend (as previously adjusted (if at all)), multiplied by

(2) the overall percentage of the adjustment (if such adjustment is an increase) in the rates of basic pay for members of the uniformed services made effective for the fiscal year in which the school year ends.

(Added P.L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 717; amended P.L. 96–107, § 804(a), Nov. 9, 1979, 93 Stat. 812; P.L. 98–94, § 935(a), Sept. 24, 1983, 97 Stat. 652; P.L. 101–189, § 725(b), Nov. 29, 1989, 103 Stat. 1479; P.L. 101–510, § 1484(k)(7), Nov. 5, 1990, 104 Stat. 1719; P.L. 104–106, § 1501(c)(22), Feb. 10, 1996, 110 Stat. 499.)

§ 2122. Eligibility for participation

(a) To be eligible for participation as a member of the program, a person must be a citizen of the United States and must—

(1) be accepted for admission to, or enrolled in, an institution in a course of study or selected to receive specialized training;

(2) sign an agreement that unless sooner separated he will—

(A) complete the educational phase of the program;

(B) accept an appropriate reappointment or designation within his military service, if tendered, based upon his health profession, following satisfactory completion of the program;

(C) participate in the intern program of his service if selected for such participation;

(D) participate in the residency program of his service, if selected, or be released from active duty for the period required to undergo civilian residency if selected for such training; and

(E) because of his sincere motivation and dedication to a career in the uniformed services, participate in military training while he is in the program, under regulations prescribed by the Secretary of Defense; and

(3) meet the requirements for appointment as a commissioned officer.

(b) The Secretary of Defense may require, as part of the agreement under subsection (a)(2), that a person must agree to accept, if offered, residency training in a health profession skill which has been designated by the Secretary as a critically needed wartime skill.

(Added P.L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 717; amended P.L. 100–180, § 712(a), Dec. 4, 1987, 101 Stat. 1112; P.L. 101–189, § 725(c), Nov. 29, 1989, 103 Stat. 1479.)

§ 2123. Members of the program: active duty obligation; failure to complete training; release from program

(a) A member of the program incurs an active duty obligation. The amount of his obligation shall be determined under regulations prescribed by the Secretary of Defense, but those regulations may not provide for a period of obligation of less than one year for each year of participation in the program.

(b) A period of time spent in military intern or residency training shall not be creditable in satisfying an active duty obligation imposed by this section.

(c) A member of the program who, under regulations prescribed by the Secretary of Defense, is dropped from the program for deficiency in conduct or studies, or for other reasons, may be required to perform active duty in an appropriate military capacity in accordance with the active duty obligation imposed by this section.

(d) The Secretary of a military department, under regulations prescribed by the Secretary of Defense, may relieve a member of the program who is dropped from the program from an active duty obligation imposed by this section, but such relief shall not relieve him from any military obligation imposed by any other law.

(e)(1) A member of the program who is relieved of the member's active duty obligation under this subchapter before the completion of that active duty obligation may be given, with or without the consent of the member, any of the following alternative obligations, as determined by the Secretary of the military department concerned:

(A) A service obligation in another armed force for a period of time not less than the member's remaining active duty service obligation.

(B) A service obligation in a component of the Selected Reserve for a period not less than twice as long as the member's remaining active duty service obligation.

(C) Repayment to the Secretary of Defense of a percentage of the total cost incurred by the Secretary under this subchapter on behalf of the member equal to the percentage of the member's total active duty service obligation being relieved, plus interest.

(2) In addition to the alternative obligations specified in paragraph (1), if the member is relieved of an active duty obligation by

reason of the separation of the member because of a physical disability, the Secretary of the military department concerned may give the member a service obligation as a civilian employee employed as a health care professional in a facility of the uniformed services for a period of time equal to the member's remaining active duty service obligation.

(3) The Secretary of Defense shall prescribe regulations describing the manner in which an alternative obligation may be given under this subsection. [1]

(Added P.L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 718; amended P.L. 96–513, § 511(67), Dec. 12, 1980, 94 Stat. 2926; P.L. 100–180, § 711(a)(2), Dec. 4, 1987, 101 Stat. 1108; P.L. 101–189, § 725(a), (h)(1), Nov. 29, 1989, 103 Stat. 1480, 1478; P.L. 101–597, § 401(b), Nov. 16, 1990, 104 Stat. 3035; P.L. 104–201, § 741(a), Sept. 23, 1996, 110 Stat. 2599.)

§ 2124. Members of the program: numbers appointed

The number of persons who may be designated as members of the program for training in each health profession shall be as prescribed by the Secretary of Defense, except that the total number of persons so designated may not, at any time, exceed 6,000.

(Added P.L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 718; amended P.L. 99–145, § 672(i), Nov. 8, 1985, 99 Stat. 663; P.L. 100–180, §§ 711(a)(2), 712(b)(1), Dec. 4, 1987, 101 Stat. 1108, 1112; P.L. 101–189, § 725(g), Nov. 29, 1989, 103 Stat. 1480; P.L. 102–190, § 717, Dec. 5, 1991, 105 Stat. 1404.)

§ 2125. Members of the program: exclusion from authorized strengths

Notwithstanding any other provision of law, members of the program shall not be counted against any prescribed military strengths.

(Added P.L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 718.)

§ 2126. Members of the program: service credit

(a) SERVICE NOT CREDITABLE.—Except as provided in subsection (b), service performed while a member of the program shall not be counted—

(1) in determining eligibility for retirement other than by reason of a physical disability incurred while on active duty as a member of the program; or

(2) in computing years of service creditable under section 205 of title 37.

(b) SERVICE CREDITABLE FOR CERTAIN PURPOSES.—(1) The Secretary concerned may authorize service performed by a member of the program in pursuit of a course of study under this subchapter to be counted in accordance with this subsection if the member—

(A) completes the course of study;

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[1] As provided in section 741(c) of the National Defense Authorization Act for Fiscal Year 1997 (P.L. 104–201; 110 Stat. 2600), section 2123(e) applies only with respect to individuals who first become members of the Armed Forces Health Professions Scholarship and Financial Assistance program or students of the Uniformed Services University of the Health Sciences on or after October 1, 1996.

As provided in section 741(d)(1) of that Act, the Secretary of Defense may implement the alternative obligations provided in section 2123(e) (with the agreement of the person involved) in cases in which a member of the Armed Forces Health Professions Scholarship and Financial Assistance program is, as of October 1, 1996, serving an active duty obligation under the program, or incurring an active duty obligation as a participant in the program, and is subsequently relieved of the active-duty obligation before the completion of the obligation.

(B) completes the active duty obligation imposed under section 2123(a) of this title; and

(C) possesses a specialty designated by the Secretary concerned as critically needed in wartime.

(2) Service credited under paragraph (1) counts only for the award of retirement points for computation of years of service under section 12732 of this title and for computation of retired pay under section 12733 of this title.

(3) The number of points credited to a member under paragraph (1) for a year of participation in a course of study is 50. The points shall be credited to the member for one of the years of that participation at the end of each year after the completion of the course of study that the member serves in the Selected Reserve and is credited under section 12732(a)(2) of this title with at least 50 points. The points credited for the participation shall be recorded in the member's records as having been earned in the year of the participation in the course of study.

(4) Service may not be counted under paragraph (1) for more than four years of participation in a course of study as a member of the program.

(5) A member of the Selected Reserve may be considered to be in an active status while pursuing a course of study under this subchapter only for purposes of sections 12732(a) and 12733(3) of this title.

(6) A member is not entitled to any retroactive award of, or increase in, pay or allowances under title 37 by reason of an award of service credit under paragraph (1).

(Added P.L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 718; amended P.L. 96–513, § 501(22), Dec. 12, 1980, 94 Stat. 2908; P.L. 104–201, § 543(a), Sept. 23, 1996, 110 Stat. 2521; P.L. 106–65, § 544, Oct. 5, 1999, 113 Stat. 608.)

§ 2127. Scholarships and financial assistance: payments

(a) The Secretary of Defense may provide for the payment of all educational expenses incurred by a member of the program, including tuition, fees, books, and laboratory expenses. Such payments, however, shall be limited to those educational expenses normally incurred by students at the institution and in the health profession concerned who are not members of the program.

(b) The Secretary of Defense may contract with an accredited civilian educational institution for the payment of tuition and other educational expenses of members of the program authorized by this subchapter. Payment to such institutions may be made without regard to subsections (a) and (b) of section 3324 of title 31.

(c) Payments made under subsection (b) shall not cover any expenses other than those covered by subsection (a).

(d) When the Secretary of Defense determines, under regulations prescribed by the Secretary of Health and Human Services, that an accredited civilian educational institution has increased its total enrollment for the sole purpose of accepting members of the program covered by this subchapter, he may provide under a contract with such an institution for additional payments to cover the portion of the increased costs of the additional enrollment which are not covered by the institution's normal tuition and fees.

(e) A person participating as a member of the program in specialized training shall be paid an annual grant of $15,000 in addition to the stipend under section 2121(d) of this title. The amount of the grant shall be increased annually by the Secretary of Defense, effective July 1 of each year, in the same manner as provided for stipends.

(Added P.L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 718; amended P.L. 96–513, § 511(67), Dec. 12, 1980, 94 Stat. 2926; P.L. 97–258, § 3(b)(3), Sept. 13, 1982, 96 Stat. 1063; P.L. 98–525, § 1405(56)(A), Oct. 19, 1984, 98 Stat. 2626; P.L. 100–180, § 711(a)(2), Dec. 4, 1987, 101 Stat. 1108; P.L. 101–189, § 725(d)(1), (2), Nov. 29, 1989, 103 Stat. 1479.)

[§§ 2128 to 2130. Transferred to §§ 16201 to 16203]

SUBCHAPTER II—NURSE OFFICER CANDIDATE ACCESSION PROGRAM

Sec.
2130a. Financial assistance: nurse officer candidates.

§ 2130a. Financial assistance: nurse officer candidates

(a) BONUS AUTHORIZED.—(1) A person described in subsection (b) who, during the period beginning on November 29, 1989, and ending on December 31, 2001, executes a written agreement in accordance with subsection (c) to accept an appointment as a nurse officer may, upon the acceptance of the agreement by the Secretary concerned, be paid an accession bonus of not more than $5,000. The bonus shall be paid in periodic installments, as determined by the Secretary concerned at the time the agreement is accepted, except that the first installment may not exceed $2,500.

(2) In addition to the accession bonus payable under paragraph (1), a person selected under such paragraph shall be entitled to a monthly stipend of not more than $500 for each month the individual is enrolled as a full-time student in an accredited baccalaureate degree program in nursing at a civilian educational institution that does not have a Senior Reserve Officers' Training Program established under section 2102 of this title. The continuation bonus may be paid for not more than 24 months.

(b) ELIGIBLE STUDENTS.—A person eligible to enter into an agreement under subsection (a) is a person who—

(1) is enrolled as a full-time student in an accredited baccalaureate degree program in nursing at a civilian educational institution that does not have a Senior Reserve Officers' Training Program established under section 2102 of this title;

(2) has completed the second year of an accredited baccalaureate degree program in nursing and has more than 6 months of academic work remaining before graduation; and

(3) meets the qualifications for appointment as an officer of a reserve component of the Army, Navy, or Air Force as set forth in section 12201 of this title or, in the case of the Public Health Service, section 207 of the Public Health Service Act (42 U.S.C. 209) and the regulations of the Secretary concerned.

(c) REQUIRED AGREEMENT.—The agreement referred to in subsection (a) shall provide that the person executing the agreement agrees to the following:

(1) That the person will complete the nursing degree program described in subsection (b)(1).

(2) That, upon acceptance of the agreement by the Secretary concerned, the person will enlist in a reserve component of an armed force.

(3) That the person will accept an appointment as an officer in the Nurse Corps of the Army or the Navy or as an officer designated as a nurse officer in the Air Force or commissioned corps of the Public Health Service, as the case may be, upon graduation from the nursing degree program.

(4) That the person will serve on active duty as such an officer—

(A) for a period of 4 years in the case of a person whose agreement was accepted by the Secretary concerned during that person's fourth year of the nursing degree program; or

(B) for a period of 5 years in the case of a person whose agreement was accepted by the Secretary concerned during that person's third year of the nursing degree program.

(d) REFUND OF PAYMENTS.—(1) A person shall refund any bonus or stipend paid under subsection (a) if the person—

(A) fails to complete a nursing degree program in which the person is enrolled in accordance with the agreement entered into under such subsection;

(B) having completed the nursing degree program, fails to accept an appointment, if tendered, as an officer of the Nurse Corps of the Army or the Navy or as an officer designated as a nurse officer of the Air Force or commissioned corps of the Public Health Service; or

(C) fails to complete the period of obligated active service required under the agreement.

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

(3) 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 this subsection. This paragraph applies to any case commenced under title 11 after November 29, 1989.

(e) REGULATIONS.—The Secretaries concerned shall prescribe regulations to carry out this section.

(Added P.L. 101–189, § 707(a), Nov. 29, 1989, 103 Stat. 1474; amended P.L. 101–510, § 1484(d)(1), Nov. 5, 1990, 104 Stat. 1716; P.L. 102–90, § 612(c), Dec. 5, 1991, 105 Stat. 1376; P.L. 102–484, § 612(h), Oct. 23, 1992, 106 Stat. 2421; P.L. 103–160, § 611(a), Nov. 30, 1993, 107 Stat. 1679; P.L. 103–337, § 612(a), Oct. 5, 1994, 108 Stat. 2783; P.L. 104–106, §§ 612(a), 1501(c)(23), Feb. 10, 1996, 110 Stat. 359, 499; P.L. 104–201, § 612(a), Sept. 23, 1996, 110 Stat. 2543; P.L. 105–85, § 612(a), Nov. 18, 1997, 111 Stat. 1786; P.L. 105–261, § 612(a), Oct. 17, 1998, 112 Stat. 2039; P.L. 106–65, § 612(a), Oct. 5, 1999, 113 Stat. 650; P.L. 106–398, § 1[622(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–151.)

CHAPTER 106—EDUCATIONAL ASSISTANCE FOR MEMBERS OF THE SELECTED RESERVE

Sec.
2131. Reference to chapter 1606.
[2132 to 2137. Transferred.]
2138. Savings provision.

§ 2131. Reference to chapter 1606

Provisions of law relating to educational assistance for members of the Selected Reserve under the Montgomery GI Bill program are set forth in chapter 1606 of this title (beginning with section 16131).

(Added P.L. 103–337, § 1663(b)(7), Oct. 5, 1994, 108 Stat. 3007.)

[Former § 2131 and §§ 2132–2137 transferred to § 16131 through § 16137]

§ 2138. Savings provision

A member who entered into an agreement under this chapter before July 1, 1985, shall continue to be eligible for educational assistance in accordance with the terms of such agreement and of this chapter as in effect before such date.

(Added P.L. 98–525, § 705(a), Oct. 19, 1984, 98 Stat. 2567.)

CHAPTER 107—EDUCATIONAL ASSISTANCE FOR PERSONS ENLISTING FOR ACTIVE DUTY [1]

Sec.
2141. Educational assistance program: establishment.
2142. Educational assistance program: eligibility.
2143. Educational assistance: amount.
2144. Subsistence allowance.
2145. Adjustments of amount of educational assistance and of subsistence allowance.
2146. Right of member upon subsequent reenlistment to lump-sum payment in lieu of educational assistance.
2147. Right of member after reenlisting to transfer entitlement to spouse or dependent children.
2148. Duration of entitlement.
2149. Applications for educational assistance.

§ 2141. Educational assistance program: establishment

(a) To encourage enlistments and reenlistments for service on active duty in the armed forces, the Secretary of each military department may establish a program in accordance with this chapter to provide educational assistance to persons enlisting or reenlisting in an armed force under his jurisdiction. The costs of any such program shall be borne by the Department of Defense, and a person participating in any such program may not be required to make any contribution to the program.

(b) The Secretary of Defense shall prescribe regulations for the administration of this chapter. Such regulations shall take account of the differences among the several armed forces.

(c) In this chapter, the term "enlistment" means original enlistment or reenlistment.

(Added P.L. 96–342, § 901(a), Sept. 8, 1980, 94 Stat. 1111; amended P.L. 100–456, § 1233(k)(1), Sept. 29, 1988, 102 Stat. 2058.)

§ 2142. Educational assistance program: eligibility

(a)(1) A program of educational assistance established under this chapter shall provide that any person enlisting or reenlisting in an armed force under the jurisdiction of the Secretary of the military department concerned who meets the eligibility requirements established by the Secretary in accordance with subsection (b) shall, subject to paragraph (3), become entitled to educational assistance under section 2143 of this title at the time of such enlistment.

(2) The period of educational assistance to which such a person becomes entitled is one standard academic year (or the equivalent) for each year of the enlistment of such person, up to a maximum of four years. However, if the person is discharged or otherwise re-

[1] Section 2142(b)(1) of this chapter provides that eligibility for educational assistance under this chapter is limited to persons who enlist or reenlist after September 30, 1980, and before October 1, 1981.

leased from active duty after completing two years of the term of such enlistment but before completing the full term of such enlistment (or before completing four years of such term, in the case of an enlistment of more than four years), then the period of educational assistance to which the person is entitled is one standard academic year (or the equivalent) for each year of active service of such person during such term. For the purposes of the preceding sentence, a portion of a year of active service shall be rounded to the nearest month and shall be prorated to a standard academic year.

(3)(A) A member who is discharged or otherwise released from active duty before completing two years of active service of an enlistment which is the basis for entitlement to educational assistance under this chapter or who is discharged or otherwise released from active duty under other than honorable conditions is not entitled to educational assistance under this chapter.

(B) Entitlement to educational assistance under this chapter may not be used until a member has completed two years of active service of the enlistment which is the basis for entitlement to such educational assistance.

(b) In establishing requirements for eligibility for an educational assistance program under this chapter, the Secretary concerned shall limit eligibility to persons who—

(1) enlist or reenlist for service on active duty as a member of the Army, Navy, Air Force, or Marine Corps after September 30, 1980, and before October 1, 1981;

(2) are graduates from a secondary school; and

(3) meet such other requirements as the Secretary may consider appropriate for the purposes of this chapter and the needs of the armed forces.

(Added P.L. 96–342, § 901(a), Sept. 8, 1980, 94 Stat. 1111.)

§ 2143. Educational assistance: amount

(a) Subject to subsection (b), an educational assistance program established under section 2141 of this title shall provide for payment by the Secretary concerned of educational expenses incurred for instruction at an accredited institution by a person entitled to such assistance under this chapter. Expenses for which payment may be made under this section include tuition, fees, books, laboratory fees, and shop fees for consumable materials used as part of classroom or laboratory instruction. Payments under this section shall be limited to those educational expenses normally incurred by students at the institution involved.

(b)(1) The Secretary concerned shall establish the amount of educational assistance for a standard academic year (or the equivalent) to which a person becomes entitled under this chapter at the time of an enlistment described in section 2142 of this title. Depending on the needs of the service, different amounts may be established for different categories of persons or enlistments. The amount of educational assistance to which any person is entitled shall be adjusted in accordance with section 2145 of this title.

(2) The amount of educational assistance which may be provided to any person for a standard academic year (or the equiva-

lent) may not exceed $1,200, adjusted in accordance with section 2145 of this title.

(c) In this section, the term "accredited institution" means a civilian college or university or a trade, technical, or vocational school in the United States (including the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands) that provides education at the postsecondary level and that is accredited by a nationally recognized accrediting agency or association or by an accrediting agency or association recognized by the Secretary of Education.

(Added P.L. 96–342, § 901(a), Sept. 8, 1980, 94 Stat. 1112; amended P.L. 100–180, § 1231(18)(A), Dec. 4, 1987, 101 Stat. 1161.)

§ 2144. Subsistence allowance

(a) Subject to subsection (b), a person entitled to educational assistance under this chapter is entitled to receive a monthly subsistence allowance during any period for which educational assistance is provided such person. The amount of a subsistence allowance under this section is $300 per month, adjusted in accordance with section 2145 of this title, in the case of a person pursuing a course of instruction on a full-time basis and is one-half of such amount (as so adjusted) in the case of a person pursuing a course of instruction on less than a full-time basis.

(b) The number of months for which a subsistence allowance may be provided to any person under this section is computed on the basis of nine months for each standard academic year of educational assistance to which such person is entitled.

(c) For purposes of subsection (a), a person shall be considered to be pursuing a course of instruction on a full-time basis if the person is enrolled in twelve or more semester hours of instruction (or the equivalent, as determined by Secretary concerned).

(Added P.L. 96–342, § 901(a), Sept. 8, 1980, 94 Stat. 1112.)

§ 2145. Adjustments of amount of educational assistance and of subsistence allowance

(a) Once each year, the Secretary of Defense shall adjust the amount of educational assistance which may be provided to any person in any standard academic year under section 2143 of this title, and the amount of the subsistence allowance authorized under section 2144 of this title for pursuit of a course of instruction on a full-time basis, in a manner consistent with the change over the preceding twelve-month period in the average actual cost of attendance at public institutions of higher education.

(b) In this section, the term "actual cost of attendance" has the meaning given the term "cost of attendance" by section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087ll).

(Added P.L. 96–342, § 901(a), Sept. 8, 1980, 94 Stat. 1113; amended P.L. 100–180, § 1231(18)(A), Dec. 4, 1987, 101 Stat. 1161; P.L. 103–35, § 201(c)(2), May 31, 1993, 107 Stat. 98.)

§ 2146. Right of member upon subsequent reenlistment to lump-sum payment in lieu of educational assistance

(a) A member who is entitled to educational assistance under this chapter and who reenlists at the end of the enlistment which

established such entitlement may, at the time of such reenlistment, elect to receive a lump-sum payment computed under subsection (b) in lieu of receiving such educational assistance. An election to receive such a lump-sum payment is irrevocable.

(b) The amount of a lump-sum payment under subsection (a) is 60 percent of the sum of—

(1) the product of (A) the rate for educational assistance under section 2143(b) of this title applicable to such member which is in effect at the time of such reenlistment, and (B) the number of standard academic years of entitlement of such member to such assistance; and

(2) the product of (A) the rate for the subsistence allowance authorized under section 2144 of this title for pursuit of a course of instruction on a full-time basis at the time of such reenlistment, and (B) the number of months of entitlement of such member to such allowance.

(Added P.L. 96–342, § 901(a), Sept. 8, 1980, 94 Stat. 1113.)

§ 2147. Right of member after reenlisting to transfer entitlement to spouse or dependent children

(a)(1)(A) A person who is entitled to educational assistance under section 2142 of this title and who reenlisted in an armed force at any time after the end of the enlistment which established such entitlement may at any time after such reenlistment elect to transfer all or any part of such entitlement to the spouse or dependent child of such person.

(B) The Secretary of the Navy may authorize a member of the Navy or Marine Corps who is entitled to educational assistance under section 2142 of this title and whose enlistment that established such entitlement was the member's second reenlistment as a member of the armed forces to transfer all or part of such entitlement to the spouse or dependent child of such member after the completion of four years of active service of that second reenlistment if that reenlistment was for a period of at least six years.

(C) A transfer under this paragraph may be revoked at any time by the person making the transfer.

(2) If a person described in paragraph (1) dies before making an election authorized by such paragraph but has never made an election not to transfer such entitlement, any unused entitlement of such person shall be automatically transferred to such person's surviving spouse or (if there is no eligible surviving spouse) to such person's dependent children. A surviving spouse to whom entitlement to educational assistance is transferred under this paragraph may elect to transfer such entitlement to the dependent children of the person whose service established such entitlement.

(3) Any transfer of entitlement under this subsection shall be made in accordance with regulations prescribed by the Secretary of the military department concerned.

(b) A spouse or surviving spouse or a dependent child to whom entitlement is transferred under subsection (a) is entitled to educational assistance under this chapter in the same manner and at the same rate as the person from whom the entitlement was transferred.

(c) The total amount of educational assistance available to a person entitled to educational assistance under section 2142 of this title and to the person's spouse, surviving spouse, and dependent children is the amount of educational assistance to which the person is entitled. If more than one person is being provided educational assistance for the same period by virtue of the entitlement of the same person, the subsistence allowance authorized by section 2144 of this title shall be divided in such manner as the person may specify or (if the person fails to specify) as the Secretary concerned may prescribe.

(d) In this section:

(1) The term "dependent child" has the meaning given the term "dependent" in section 1072(2)(D) of this title.

(2) The term "surviving spouse" means a widow or widower who is not remarried.

(Added P.L. 96–342, § 901(a), Sept. 8, 1980, 94 Stat. 1113; amended P.L. 97–22, § 10(b)(3), July 10, 1981, 95 Stat. 137; P.L. 99–145, § 673, Nov. 8, 1985, 99 Stat. 664; P.L. 100–180, § 1231(17), Dec. 4, 1987, 101 Stat. 1161.)

§ 2148. Duration of entitlement

The entitlement of any person to educational assistance under this chapter expires at the end of the ten-year period beginning on the date of the retirement or discharge or other separation from active duty of the person upon whose service such entitlement is based. In the case of a member entitled to educational assistance under this chapter who dies while on active duty and whose entitlement is transferred to a spouse or dependent child, such entitlement expires at the end of the ten-year period beginning on the date of such member's death.

(Added P.L. 96–342, § 901(a), Sept. 8, 1980, 94 Stat. 1114.)

§ 2149. Applications for educational assistance

To receive educational assistance benefits under this chapter, a person entitled to such assistance under section 2142 or 2147 of this title shall submit an application for such assistance to the Secretary concerned in such form and manner as the Secretary concerned may prescribe.

(Added P.L. 96–342, § 901(a), Sept. 8, 1980, 94 Stat. 1114.)

CHAPTER 108—DEPARTMENT OF DEFENSE SCHOOLS [1]

Sec.
2161. Joint Military Intelligence College: academic degrees.
2162. Preparation of budget requests for operation of professional military education schools.
2163. National Defense University: masters of science in national security strategy and in national resource strategy.
2164. Department of Defense domestic dependent elementary and secondary schools.
2165. National Defense University: component institutions.
2166. Western Hemisphere Institute for Security Cooperation.

§ 2161. Joint Military Intelligence College: academic degrees

Under regulations prescribed by the Secretary of Defense, the president of the Joint Military Intelligence College may, upon recommendation by the faculty of the college, confer upon a graduate of the college who has fulfilled the requirements for the degree the following:

(1) The degree of Master of Science of Strategic Intelligence (MSSI).

(2) The degree of Bachelor of Science in Intelligence (BSI).

(Added P.L. 96–450, § 406(a), Oct. 14, 1980, 94 Stat. 1980; amended P.L. 105–107, § 501(a), Nov. 20, 1997, 111 Stat. 2261.)

§ 2162. Preparation of budget requests for operation of professional military education schools

(a) UNIFORM COST ACCOUNTING.—The Secretary of Defense, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, shall promulgate a uniform cost accounting system for use by the Secretaries of the military departments in preparing budget requests for the operation of professional military education schools.

(b) PREPARATION OF BUDGET REQUESTS.—(1) Amounts requested for a fiscal year for the operation of each professional military education school shall be set forth as a separate budget request in the materials submitted by the Secretary of Defense to Congress in support of the budget request for the Department of Defense.

(2) The Secretary of a military department preparing a budget request for a professional military education school shall carefully consider the views of the Chairman of the Joint Chiefs of Staff, particularly with respect to the amount of the request for the oper-

[1] Section 8069 of the Department of Defense Appropriations Act, 1997 (as contained in section 101(b) of P.L. 104–208), provides:

SEC. 8069. Notwithstanding any other provision of law, for resident classes entering the war colleges after September 30, 1997, the Department of Defense shall require that not less than 20 percent of the total of United States military students at each war college shall be from military departments other than the hosting military department: *Provided,* That each military department will recognize the attendance at a sister military department war college as the equivalent of attendance at its own war college for promotion and advancement of personnel.

ation of the schools of the National Defense University and the joint professional military education curricula of the other professional military education schools.

(c) COMPARISON OF BUDGET REQUESTS.—Materials prepared in support of the budget request for a professional military education school shall describe whether the amount requested for that school is comparable to the amounts requested for other professional military education schools, taking into consideration the size and activities of the schools.

(d) PROFESSIONAL MILITARY EDUCATION SCHOOLS.—This section applies to each of the following professional military education schools:

(1) The National Defense University.
(2) The Army War College.
(3) The College of Naval Warfare.
(4) The Air War College.
(5) The United States Army Command and General Staff College.
(6) The College of Naval Command and Staff.
(7) The Air Command and Staff College.
(8) The Marine Corps University.

(Added P.L. 101–510, § 911(a), Nov. 5, 1990, 104 Stat. 1625; amended P.L. 105–85, § 921(b), Nov. 18, 1997, 111 Stat. 1862.)

§ 2163. National Defense University: masters of science in national security strategy and in national resource strategy

(a) NATIONAL WAR COLLEGE DEGREE.—The President of the National Defense University, upon the recommendation of the faculty and commandant of the National War College, may confer the degree of master of science of national security strategy upon graduates of the National War College who fulfill the requirements for the degree.

(b) ICAF DEGREE.—The President of the National Defense University, upon the recommendation of the faculty and commandant of the Industrial College of the Armed Forces, may confer the degree of master of science of national resource strategy upon graduates of the Industrial College of the Armed Forces who fulfill the requirements for the degree.

(c) REGULATIONS.—The authority provided by subsections (a) and (b) shall be exercised under regulations prescribed by the Secretary of Defense.

(Added P.L. 103–160, § 922(a), Nov. 30, 1993, 107 Stat. 1730.)

§ 2164. Department of Defense domestic dependent elementary and secondary schools

(a) AUTHORITY OF SECRETARY.—(1) If the Secretary of Defense makes a determination that appropriate educational programs are not available through a local educational agency for dependents of members of the armed forces and dependents of civilian employees of the Federal Government residing on a military installation in the United States (including territories, commonwealths, and possessions of the United States), the Secretary may enter into arrangements to provide for the elementary or secondary education

of the dependents of such members of the armed forces and, to the extent authorized in subsection (c), the dependents of such civilian employees.

(2) The Secretary may, at the discretion of the Secretary, permit dependents of members of the armed forces and, to the extent provided in subsection (c), dependents of civilian employees of the Federal Government residing in a territory, commonwealth, or possession of the United States but not on a military installation, to enroll in an educational program provided by the Secretary pursuant to this subsection. If a member of the armed forces is assigned to a remote location or is assigned to an unaccompanied tour of duty, a dependent of the member who resides, on or off a military installation, in a territory, commonwealth, or possession of the United States, as authorized by the member's orders, may be enrolled in an educational program provided by the Secretary under this subsection.

(b) FACTORS FOR SECRETARY TO CONSIDER.—(1) Factors to be considered by the Secretary of Defense in making a determination under subsection (a) shall include the following:

(A) The extent to which such dependents are eligible for free public education in the local area adjacent to the military installation.

(B) The extent to which the local educational agency is able to provide an appropriate educational program for such dependents.

(2) For purposes of paragraph (1)(B), an appropriate educational program is a program that, as determined by the Secretary, is comparable to a program of free public education provided for children by the following local educational agencies:

(A) In the case of a military installation located in a State (other than an installation referred to in subparagraph (B)), local educational agencies in the State that are similar to the local educational agency referred to in paragraph (1)(B).

(B) In the case of a military installation with boundaries contiguous to two or more States, local educational agencies in the contiguous States that are similar to the local educational agency referred to in paragraph (1)(B).

(C) In the case of a military installation located in a territory, commonwealth, or possession, the District of Columbia public schools, except that an educational program determined comparable under this subparagraph may be considered appropriate for the purposes of paragraph (1)(B) only if the program is conducted in the English language.

(c) ELIGIBILITY OF DEPENDENTS OF FEDERAL EMPLOYEES.—(1)(A) A dependent of a Federal employee residing in permanent living quarters on a military installation at any time during the school year may enroll in an educational program provided by the Secretary of Defense pursuant to subsection (a) for dependents residing on such installation.

(B) A dependent of a United States Customs Service employee who resides in Puerto Rico, but not on a military installation, may enroll in an educational program provided by the Secretary pursuant to subsection (a) in Puerto Rico in accordance with the same

rules as apply to a dependent of a Federal employee residing in permanent living quarters on a military installation.

(2)(A) Except as provided in subparagraphs (B) and (C), a dependent of a Federal employee who is enrolled in an educational program provided by the Secretary pursuant to subsection (a) and who is not residing on a military installation may be enrolled in the program for not more than five consecutive school years.

(B) At the discretion of the Secretary, a dependent referred to in subparagraph (A) may be enrolled in the program for more than five consecutive school years if the dependent is otherwise qualified for enrollment, space is available in the program, and the Secretary will be reimbursed for the educational services provided. Any such extension shall cover only one school year at a time.

(C) Subparagraph (A) shall not apply to an individual who is a dependent of a Federal employee in the excepted service (as defined in section 2103 of title 5) and who is enrolled in an educational program provided by the Secretary pursuant to subsection (a) in Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands.

(D) Subparagraph (A) shall not apply to a dependent covered by paragraph (1)(B). No requirement under this paragraph for reimbursement for educational services provided for the dependent shall apply with respect to the dependent, except that the Secretary may require the United States Customs Service to reimburse the Secretary for the cost of the educational services provided for the dependent.

(d) SCHOOL BOARDS.—(1) The Secretary of Defense shall provide for the establishment of a school board for Department of Defense elementary and secondary schools established at each military installation under this section. The Secretary may provide for the establishment of one school board for all such schools in the Commonwealth of Puerto Rico and one school board for all such schools in Guam instead of one school board for each military installation in those locations.

(2) The school board shall be composed of the number of members, not fewer than three, prescribed by the Secretary.

(3) The parents of the students attending the school shall elect the school board in accordance with procedures which the Secretary shall prescribe.

(4)(A) A school board elected for a school under this subsection may participate in the development and oversight of fiscal, personnel, and educational policies, procedures, and programs for the school, except that the Secretary may issue any directive that the Secretary considers necessary for the effective operation of the school or the entire school system.

(B) A directive referred to in subparagraph (A) shall, to the maximum extent practicable, be issued only after the Secretary consults with the appropriate school boards elected under this subsection. The Secretary shall establish a process by which a school board or school administrative officials may formally appeal the directive to the Secretary of Defense.

(5) Meetings conducted by the school board shall be open to the public, except as provided in paragraph (6).

(6) A school board need not comply with the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), but may close meetings in accordance with such Act.

(7) The Secretary may provide for reimbursement of a school board member for expenses incurred by the member for travel, transportation, lodging, meals, program fees, activity fees, and other appropriate expenses that the Secretary determines are reasonable and necessary for the performance of school board duties by the member.

(e) ADMINISTRATION AND STAFF.—(1) The Secretary of Defense may enter into such arrangements as may be necessary to provide educational programs at the school.

(2) The Secretary may, without regard to the provisions of any other law relating to the number, classification, or compensation of employees—

(A) establish positions for civilian employees in schools established under this section;

(B) appoint individuals to such positions; and

(C) fix the compensation of such individuals for service in such positions.

(3)(A) Except as provided in subparagraph (B), in fixing the compensation of employees appointed for a school pursuant to paragraph (2), the Secretary shall consider—

(i) the compensation of comparable employees of the local educational agency in the capital of the State where the military installation is located;

(ii) the compensation of comparable employees in the local educational agency that provides public education to students who reside adjacent to the military installation; and

(iii) the average compensation for similar positions in not more than three other local educational agencies in the State in which the military installation is located.

(B) In fixing the compensation of employees in schools established in the territories, commonwealths, and possessions pursuant to the authority of this section, the Secretary shall determine the level of compensation required to attract qualified employees. For employees in such schools, the Secretary, without regard to the provisions of title 5, may provide for the tenure, leave, hours of work, and other incidents of employment to be similar to that provided for comparable positions in the public schools of the District of Columbia. For purposes of the first sentence, a school established before the effective date of this section pursuant to authority similar to the authority in this section shall be considered to have been established pursuant to the authority of this section.

(4)(A) The Secretary may, without regard to the provisions of any law relating to the number, classification, or compensation of employees—

(i) transfer employees from schools established under this section to schools in the defense dependents' education system in order to provide the services referred to in subparagraph (B) to such system; and

(ii) transfer employees from such system to schools established under this section in order to provide such services to those schools.

(B) The services referred to in subparagraph (A) are the following:

(i) Administrative services.

(ii) Logistical services.

(iii) Personnel services.

(iv) Such other services as the Secretary considers appropriate.

(C) Transfers under this paragraph shall extend for such periods as the Secretary considers appropriate. The Secretary shall provide appropriate compensation for employees so transferred.

(D) The Secretary may provide that the transfer of an employee under this paragraph occur without reimbursement of the school or system concerned.

(E) In this paragraph, the term "defense dependents' education system" means the program established and operated under section 1402(a) of the Defense Dependents' Education Act of 1978 (20 U.S.C. 921(a)).

(f) SUBSTANTIVE AND PROCEDURAL RIGHTS AND PROTECTIONS FOR CHILDREN.—(1) The Secretary shall provide the following substantive rights, protections, and procedural safeguards (including due process procedures) in the educational programs provided for under this section:

(A) In the case of children with disabilities aged 3 to 5, inclusive, all substantive rights, protections, and procedural safeguards (including due process procedures) available to children with disabilities aged 3 to 5, inclusive, under part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.).

(B) In the case of infants and toddlers with disabilities, all substantive rights, protections, and procedural safeguards (including due process procedures) available to infants and toddlers with disabilities under part H of such Act (20 U.S.C. 1471 et seq.).

(C) In the case of all other children with disabilities, all substantive rights, protections, and procedural safeguards (including due process procedures) available to children with disabilities who are 3 to 5 years old under part B of such Act.

(2) Paragraph (1) may not be construed as diminishing for children with disabilities enrolled in day educational programs provided for under this section the extent of substantive rights, protections, and procedural safeguards that were available under section 6(a) of Public Law 81–874 (20 U.S.C. 241(a)) to children with disabilities as of October 7, 1991.

(3) In this subsection:

(A) The term "children with disabilities" has the meaning given the term in section 602(a)(1) of the Individuals with Disabilities Education Act (20 U.S.C. 1401(a)(1)).

(B) The term "children with disabilities aged 3 to 5, inclusive" means such term as used in such Act (20 U.S.C. 1400 et seq.).

(C) The term "infants and toddlers with disabilities" has the meaning given the term in section 672(1) of such Act (20 U.S.C. 1472(1)).

(g) REIMBURSEMENT.—When the Secretary of Defense provides educational services under this section to an individual who is a dependent of an employee of a Federal agency outside the Department of Defense, the head of the other Federal agency shall, upon request of the Secretary of Defense, reimburse the Secretary for those services at rates routinely prescribed by the Secretary for those services. Any payments received by the Secretary under this subsection shall be credited to the account designated by the Secretary for the operation of educational programs under this section.

(h) CONTINUATION OF ENROLLMENT DESPITE CHANGE IN STATUS.—(1) The Secretary of Defense shall permit a dependent of a member of the armed forces or a dependent of a Federal employee to continue enrollment in an educational program provided by the Secretary pursuant to subsection (a) for the remainder of a school year notwithstanding a change during such school year in the status of the member or Federal employee that, except for this paragraph, would otherwise terminate the eligibility of the dependent to be enrolled in the program.

(2) The Secretary may, for good cause, authorize a dependent of a member of the armed forces or a dependent of a Federal employee to continue enrollment in an educational program provided by the Secretary pursuant to subsection (a) notwithstanding a change in the status of the member or employee that, except for this paragraph, would otherwise terminate the eligibility of the dependent to be enrolled in the program. The enrollment may continue for as long as the Secretary considers appropriate.

(3) Paragraphs (1) and (2) do not limit the authority of the Secretary to remove a dependent from enrollment in an educational program provided by the Secretary pursuant to subsection (a) at any time for good cause determined by the Secretary.

(i) AMERICAN RED CROSS EMPLOYEE DEPENDENTS IN PUERTO RICO.—(1) The Secretary may authorize the dependent of an American Red Cross employee described in paragraph (2) to enroll in an education program provided by the Secretary pursuant to subsection (a) in Puerto Rico if the American Red Cross agrees to reimburse the Secretary for the educational services so provided.

(2) An employee referred to in paragraph (1) is an American Red Cross employee who—

(A) resides in Puerto Rico; and

(B) performs, on a full-time basis, emergency services on behalf of members of the armed forces.

(3) In determining the dependency status of any person for the purposes of paragraph (1), the Secretary shall apply the same definitions as apply to the determination of such status with respect to Federal employees in the administration of this section.

(4) Subsection (g) shall apply with respect to determining the reimbursement rates for educational services provided pursuant to this subsection. Amounts received as reimbursement for such educational services shall be treated in the same manner as amounts received under subsection (g).

(Added P.L. 103–337, § 351(a), Oct. 5, 1994, 108 Stat. 2727; amended P.L. 104–106, § 1075, Feb. 10, 1996, 110 Stat. 450; P.L. 104–201, § 1608, Sept. 23, 1996, 110 Stat. 2737; P.L. 105–261, § 371(a)–(c)(2), Oct. 17, 1998, 112 Stat. 1988, 1989; P.L. 106–65, §§ 352, 353, Oct. 5, 1999, 113 Stat. 572; P.L. 106–398, § 1[361], Oct. 30, 2000, 114 Stat. 1654, 1654A–76.)

§ 2165. National Defense University: component institutions[2]

(a) IN GENERAL.—There is a National Defense University in the Department of Defense.

(b) COMPONENT INSTITUTIONS.—The National Defense University consists of the following institutions:

(1) The National War College.

(2) The Industrial College of the Armed Forces.

(3) The Joint Forces Staff College.

(4) The Institute for National Strategic Studies.

(5) The Information Resources Management College.

(6) The Center for Hemispheric Defense Studies.

(7) Any other educational institution of the Department of Defense that the Secretary considers appropriate and designates as an institution of the university.

(c) SOURCE OF FUNDS FOR CENTER FOR HEMISPHERIC DEFENSE STUDIES.—Funds available for the payment of personnel expenses under the Latin American cooperation authority set forth in section 1050 of this title are also available for the costs of the operation of the Center for Hemispheric Defense Studies.

(Added P.L. 105–85, §§ 921(a), 922(a), Nov. 18, 1997, 111 Stat. 1862, 1863; amended P.L. 105–261, §§ 904, 905(a), Oct. 17, 1998, 112 Stat. 2093; P.L. 106–398, § 1[913(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–230.)

§ 2166. Western Hemisphere Institute for Security Cooperation

(a) ESTABLISHMENT AND ADMINISTRATION.—(1) The Secretary of Defense may operate an education and training facility for the purpose set forth in subsection (b). The facility shall be known as the "Western Hemisphere Institute for Security Cooperation".

(2) The Secretary may designate the Secretary of a military department as the Department of Defense executive agent for carrying out the responsibilities of the Secretary of Defense under this section.

(b) PURPOSE.—The purpose of the Institute is to provide professional education and training to eligible personnel of nations of the Western Hemisphere within the context of the democratic principles set forth in the Charter of the Organization of American States (such charter being a treaty to which the United States is a party), while fostering mutual knowledge, transparency, con-

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[2] Subsections (a) through (d) of section 914 of the National Defense Authorization Act for Fiscal Year 2000 (P.L. 106–65; 113 Stat. 721) provide:

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a Center for the Study of Chinese Military Affairs as part of the National Defense University. The Center shall be organized under the Institute for National Strategic Studies of the University.

(b) QUALIFICATIONS OF DIRECTOR.—The Director of the Center shall be an individual who is a distinguished scholar of proven academic, management, and leadership credentials with a superior record of achievement and publication regarding Chinese political, strategic, and military affairs.

(c) MISSION.—The mission of the Center is to study and inform policymakers in the Department of Defense, Congress, and throughout the Government regarding the national goals and strategic posture of the People's Republic of China and the ability of that nation to develop, field, and deploy an effective military instrument in support of its national strategic objectives. The Center shall accomplish that mission by a variety of means intended to widely disseminate the research findings of the Center.

(d) STARTUP OF CENTER.—The Secretary of Defense shall establish the Center for the Study of Chinese Military Affairs not later than March 1, 2000. The first Director of the Center shall be appointed not later than June 1, 2000. The Center should be fully operational not later than June 1, 2001.

fidence, and cooperation among the participating nations and promoting democratic values, respect for human rights, and knowledge and understanding of United States customs and traditions.

(c) ELIGIBLE PERSONNEL.—(1) Subject to paragraph (2), personnel of nations of the Western Hemisphere are eligible for education and training at the Institute as follows:

(A) Military personnel.

(B) Law enforcement personnel.

(C) Civilian personnel.

(2) The Secretary of State shall be consulted in the selection of foreign personnel for education or training at the Institute.

(d) CURRICULUM.—(1) The curriculum of the Institute shall include mandatory instruction for each student, for at least 8 hours, on human rights, the rule of law, due process, civilian control of the military, and the role of the military in a democratic society.

(2) The curriculum may include instruction and other educational and training activities on the following:

(A) Leadership development.

(B) Counterdrug operations.

(C) Peace support operations.

(D) Disaster relief.

(E) Any other matter that the Secretary determines appropriate.

(e) BOARD OF VISITORS.—(1) There shall be a Board of Visitors for the Institute. The Board shall be composed of the following:

(A) The chairman and ranking minority member of the Committee on Armed Services of the Senate, or a designee of either of them.

(B) The chairman and ranking minority member of the Committee on Armed Services of the House of Representatives, or a designee of either of them.

(C) Six persons designated by the Secretary of Defense including, to the extent practicable, persons from academia and the religious and human rights communities.

(D) One person designated by the Secretary of State.

(E) The senior military officer responsible for training and doctrine for the Army or, if the Secretary of the Navy or the Secretary of the Air Force is designated as the executive agent of the Secretary of Defense under subsection (a)(2), the senior military officer responsible for training and doctrine for the Navy or Marine Corps or for the Air Force, respectively, or a designee of the senior military officer concerned.

(F) The commander of the unified combatant command having geographic responsibility for Latin America, or a designee of that officer.

(2) A vacancy in a position on the Board shall be filled in the same manner as the position was originally filled.

(3) The Board shall meet at least once each year.

(4)(A) The Board shall inquire into the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Institute, other matters relating to the Institute that the Board decides to consider, and any other matter that the Secretary of Defense determines appropriate.

(B) The Board shall review the curriculum of the Institute to determine whether—

(i) the curriculum complies with applicable United States laws and regulations;

(ii) the curriculum is consistent with United States policy goals toward Latin America and the Caribbean;

(iii) the curriculum adheres to current United States doctrine; and

(iv) the instruction under the curriculum appropriately emphasizes the matters specified in subsection (d)(1).

(5) Not later than 60 days after its annual meeting, the Board shall submit to the Secretary of Defense a written report of its activities and of its views and recommendations pertaining to the Institute.

(6) Members of the Board shall not be compensated by reason of service on the Board.

(7) With the approval of the Secretary of Defense, the Board may accept and use the services of voluntary and uncompensated advisers appropriate to the duties of the Board without regard to section 1342 of title 31.

(8) Members of the Board and advisers whose services are accepted under paragraph (7) shall be allowed travel and transportation expenses, including per diem in lieu of subsistence, while away from their homes or regular places of business in the performance of services for the Board. Allowances under this paragraph shall be computed—

(A) in the case of members of the Board who are officers or employees of the United States, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5; and

(B) in the case of other members of the Board and advisers, as authorized under section 5703 of title 5 for employees serving without pay.

(9) The Federal Advisory Committee Act (5 U.S.C. App. 2), other than section 14 (relating to termination after two years), shall apply to the Board.

(f) FIXED COSTS.—The fixed costs of operating and maintaining the Institute for a fiscal year may be paid from—

(1) any funds available for that fiscal year for operation and maintenance for the executive agent designated under subsection (a)(2); or

(2) if no executive agent is designated under subsection (a)(2), any funds available for that fiscal year for the Department of Defense for operation and maintenance for Defense-wide activities.

(g) TUITION.—Tuition fees charged for persons who attend the Institute may not include the fixed costs of operating and maintaining the Institute.

(h) ANNUAL REPORT.—Not later than March 15 of each year, the Secretary of Defense shall submit to Congress a detailed report on the activities of the Institute during the preceding year. The report shall be prepared in consultation with the Secretary of State.

(Added P.L. 106–398, § 1[911(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–226.)

CHAPTER 109—EDUCATIONAL LOAN REPAYMENT PROGRAMS

Sec.
2171. Education loan repayment program: enlisted members on active duty in specified military specialties.
[2172. Transferred.]
2173. Education loan repayment program: commissioned officers in specified health professions.

§ 2171. Education loan repayment program: enlisted members on active duty in specified military specialties

(a)(1) Subject to the provisions of this section, the Secretary of Defense may repay—

(A) any loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.);

(B) any loan made under part D of such title (the William D. Ford Federal Direct Loan Program, 20 U.S.C. 1087a et seq.); or

(C) any loan made under part E of such title (20 U.S.C. 1087aa et seq.).

Repayment of any such loan shall be made on the basis of each complete year of service performed by the borrower.

(2) The Secretary may repay loans described in paragraph (1) in the case of any person for service performed on active duty as an enlisted member in a military specialty specified by the Secretary.

(b) The portion or amount of a loan that may be repaid under subsection (a) is 33⅓ percent or $1,500, whichever is greater, for each year of service.

(c) If a portion of a loan is repaid under this section for any year, interest on the remainder of such loan shall accrue and be paid in the same manner as is otherwise required.

(d) Nothing in this section shall be construed to authorize refunding any repayment of a loan.

(e) A person who transfers from service making the person eligible for repayment of loans under this section (as described in subsection (a)(2)) to service making the person eligible for repayment of loans under section 16301 of this title (as described in subsection (a)(2) of that section) during a year shall be eligible to have repaid a portion of such loan determined by giving appropriate fractional credit for each portion of the year so served, in accordance with regulations of the Secretary concerned.

(f) The Secretary of Defense shall, by regulation, prescribe a schedule for the allocation of funds made available to carry out the provisions of this section and section 16301 of this title during any year for which funds are not sufficient to pay the sum of the

amounts eligible for repayment under subsection (a) and section 16301(a) of this title.

(Added P.L. 99–145, § 671(a)(1), Nov. 8, 1985, 99 Stat. 661; amended P.L. 103–337, § 1663(e), Oct. 5, 1994, 108 Stat. 3009; P.L. 104–106, § 1079(a), Feb. 10, 1996, 110 Stat. 451.)

[§ 2172. Transferred to § 16302]

§ 2173. Education loan repayment program: commissioned officers in specified health professions

(a) AUTHORITY TO REPAY EDUCATION LOANS.—For the purpose of maintaining adequate numbers of commissioned officers of the armed forces on active duty who are qualified in the various health professions, the Secretary of a military department may repay, in the case of a person described in subsection (b), a loan that—

(1) was used by the person to finance education regarding a health profession; and

(2) was obtained from a governmental entity, private financial institution, school, or other authorized entity.

(b) ELIGIBLE PERSONS.—To be eligible to obtain a loan repayment under this section, a person must—

(1) satisfy one of the requirements specified in subsection (c);

(2) be fully qualified for, or hold, an appointment as a commissioned officer in one of the health professions; and

(3) sign a written agreement to serve on active duty, or, if on active duty, to remain on active duty for a period in addition to any other incurred active duty obligation.

(c) ACADEMIC AND PROFESSIONAL REQUIREMENTS.—One of the following academic requirements must be satisfied for purposes of determining the eligibility of a person for a loan repayment under this section:

(1) The person is fully qualified in a health care profession that the Secretary of the military department concerned has determined to be necessary to meet identified skill shortages.

(2) The person is enrolled as a full-time student in the final year of a course of study at an accredited educational institution leading to a degree in a health profession other than medicine or osteopathic medicine.

(3) The person is enrolled in the final year of an approved graduate program leading to specialty qualification in medicine, dentistry, osteopathic medicine, or other health profession.

(d) CERTAIN PERSONS INELIGIBLE.—Participants of the Armed Forces Health Professions Scholarship and Financial Assistance program under subchapter I of chapter 105 of this title and students of the Uniformed Services University of the Health Sciences established under section 2112 of this title are not eligible for the repayment of an education loan under this section.

(e) LOAN REPAYMENTS.—(1) Subject to the limits established by paragraph (2), a loan repayment under this section may consist of payment of the principal, interest, and related expenses of a loan obtained by a person described in subsection (b) for—

(A) all educational expenses, comparable to all educational expenses recognized under section 2127(a) of this title for par-

ticipants in the Armed Forces Health Professions Scholarship and Financial Assistance program; and

(B) reasonable living expenses, not to exceed expenses comparable to the stipend paid under section 2121(d) of this title for participants in the Armed Forces Health Professions Scholarship and Financial Assistance program.

(2) For each year of obligated service that a person agrees to serve in an agreement described in subsection (b)(3), the Secretary of the military department concerned may pay not more than $22,000 on behalf of the person. This maximum amount shall be increased annually by the Secretary of Defense effective October 1 of each year by the percentage equal to the percent increase in the average annual cost of educational expenses and stipend costs of a single scholarship under the Armed Forces Health Professions Scholarship and Financial Assistance program. The total amount that may be repaid on behalf of any person may not exceed an amount determined on the basis of a four-year active duty service obligation.

(f) ACTIVE DUTY SERVICE OBLIGATION.—(1) A person entering into an agreement described in subsection (b)(3) incurs an active duty service obligation. The length of this obligation shall be determined under regulations prescribed by the Secretary of Defense, but those regulations may not provide for a period of obligation of less than one year for each maximum annual amount, or portion thereof, paid on behalf of the person for qualified loans.

(2) For persons on active duty before entering into the agreement, the active duty service obligation shall be served consecutively to any other obligation incurred under the agreement.

(g) EFFECT OF FAILURE TO COMPLETE OBLIGATION.—A commissioned officer who is relieved of the officer's active duty obligation under this section before the completion of that obligation may be given, with or without the consent of the officer, any alternative obligation comparable to any of the alternative obligations authorized by section 2123(e) of this title for participants in the Armed Forces Health Professions Scholarship and Financial Assistance program.

(h) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section, including standards for qualified loans and authorized payees and other terms and conditions for the making of loan repayments.

(Added P.L. 105–85, § 651(a), Nov. 18, 1997, 111 Stat. 1802.)

CHAPTER 110—EDUCATIONAL ASSISTANCE FOR MEMBERS HELD AS CAPTIVES AND THEIR DEPENDENTS

Sec.
2181. Definitions.
2182. Educational assistance: dependents of captives.
2183. Educational assistance: former captives.
2184. Termination of assistance.
2185. Programs to be consistent with programs administered by the Department of Veterans Affairs.

§ 2181. Definitions

In this chapter:

(1) The terms "captive status" and "former captive" have the meanings given those terms in section 559 of title 37.

(2) The term "dependent" has the meaning given that term in section 551 of that title.

(Added P.L. 99–399, § 806(d)(1), Aug. 27, 1986, 100 Stat. 887; amended P.L. 100–26, § 7(k)(6), April 21, 1987, 101 Stat. 284.)

§ 2182. Educational assistance: dependents of captives

(a) Under regulations prescribed by the President, the Secretary concerned shall pay (by advancement or reimbursement) a dependent of a person who is in a captive status for expenses incurred, while attending an educational or training institution, for—

(1) subsistence;

(2) tuition;

(3) fees;

(4) supplies;

(5) books;

(6) equipment; and

(7) other educational expenses.

(b) Except as provided in section 2184 of this title, payments shall be available under this section for a dependent of a person who is in a captive status for education or training that occurs—

(1) after that person is in a captive status for not less than 90 days; and

(2) on or before—

(A) the end of any semester or quarter (as appropriate) that begins before the date on which the captive status of that person terminates;

(B) the earlier of the end of any course that began before such date or the end of the 16-week period following that date if the educational or training institution is not operated on a semester or quarter system; or

(C) a date specified by the Secretary concerned in order to respond to special circumstances.

(c) If a person in a captive status or a former captive dies and the death is incident to the captivity, payments shall be available under this section for a dependent of that person for education or training that occurs after the date of the death of that person.

(d) The provisions of this section shall not apply to any dependent who is eligible for assistance under chapter 35 of title 38 or similar assistance under any other provision of law.

(Added P.L. 99–399, § 806(d)(1), Aug. 27, 1986, 100 Stat. 887.)

§ 2183. Educational assistance: former captives

(a) In order to respond to special circumstances, the Secretary concerned may pay (by advancement or reimbursement) a person who is a former captive for expenses incurred, while attending an educational or training institution, for—

(1) subsistence;
(2) tuition;
(3) fees;
(4) supplies;
(5) books;
(6) equipment; and
(7) other educational expenses.

(b) Except as provided in section 2184 of this title, payments shall be available under this section for a person who is a former captive for education or training that occurs—

(1) after the termination of the status of that person as a captive; and

(2) on or before—

(A) the end of any semester or quarter (as appropriate) that begins before the end of the 10-year period beginning on the date on which the status of that person as a captive terminates; or

(B) if the educational or training institution is not operated on a semester or quarter system, the earlier of the end of any course that began before such date or the end of the 16-week period following that date.

(c) Payments shall be available under this section only to the extent that such payments are not otherwise authorized by law.

(Added P.L. 99–399, § 806(d)(1), Aug. 27, 1986, 100 Stat. 888.)

§ 2184. Termination of assistance

Assistance under this chapter—

(1) shall be discontinued for any person whose conduct or progress is unsatisfactory under standards consistent with those established under section 3524 of title 38; and

(2) may not be provided for any person for more than 45 months (or the equivalent in other than full-time education or training).

(Added P.L. 99–399, § 806(d)(1), Aug. 27, 1986, 100 Stat. 888; amended P.L. 103–337, § 1070(e)(7), Oct. 5, 1994, 108 Stat. 2859.)

§ 2185. Programs to be consistent with programs administered by the Department of Veterans Affairs

Regulations prescribed to carry out this chapter shall provide that the programs under this chapter shall be consistent with the

educational assistance programs under chapters 35 and 36 of title 38.

(Added P.L. 99–399, § 806(d)(1), Aug. 27, 1986, 100 Stat. 888; amended P.L. 101–189, § 1621(a)(7)(A), Nov. 29, 1989, 103 Stat. 1603.)

CHAPTER 111—SUPPORT OF SCIENCE, MATHEMATICS, AND ENGINEERING EDUCATION

Sec.
2191. Graduate fellowships.
2192. Improvement of education in technical fields: general authority regarding education in science, mathematics, and engineering.
2193. Improvement of education in technical fields: grants for higher education in science and mathematics.
2193a. Improvement of education in technical fields: general authority for support of elementary and secondary education in science and mathematics.
2193b. Improvement of education in technical fields: program for support of elementary and secondary education in science, mathematics, and technology.
2194. Education partnerships.
2195. Department of Defense cooperative education programs.
2196. Manufacturing engineering education: grant program.
2197. Manufacturing experts in the classroom.
2198. Management training program in Japanese language and culture.
2199. Definitions.

§ 2191. Graduate fellowships

(a) The Secretary of Defense shall prescribe regulations providing for the award of fellowships to citizens and nationals of the United States who agree to pursue graduate degrees in science, engineering, or other fields of study designated by the Secretary to be of priority interest to the Department of Defense.

(b) A fellowship awarded pursuant to regulations prescribed under subsection (a) shall be known as a "National Defense Science and Engineering Graduate Fellowship".

(c) National Defense Science and Engineering Graduate Fellowships shall be awarded solely on the basis of academic ability. The Secretary shall take all appropriate actions to encourage applications for such fellowships of persons who are members of groups (including minority groups, women, and disabled persons) which historically have been underrepresented in science and technology fields. Recipients shall be selected on the basis of a nationwide competition. The award of a fellowship under this section may not be predicated on the geographic region in which the recipient lives or the geographic region in which the recipient will pursue an advanced degree.

(d) The regulations prescribed under this section shall include—

(1) the criteria for award of fellowships;

(2) the procedures for selecting recipients;

(3) the basis for determining the amount of a fellowship; and

(4) the maximum amount that may be awarded to an individual during an academic year.

(Added P.L. 101–189, § 843(d)(1), Nov. 29, 1989, 103 Stat. 1516.)

§ 2192. Improvement of education in technical fields: general authority regarding education in science, mathematics, and engineering

(a) The Secretary of Defense, in consultation with the Secretary of Education, shall, on a continuing basis—

(1) identify actions which the Department of Defense may take to improve education in the scientific, mathematics, and engineering skills necessary to meet the long-term national defense needs of the United States for personnel proficient in such skills; and

(2) establish and conduct programs to carry out such actions.

(b) The Secretary shall designate an individual within the Office of the Secretary of Defense to advise and assist the Secretary regarding matters relating to science, mathematics, and engineering education and training.

(Added P.L. 101–510, § 247(a), Nov. 5, 1990, 104 Stat. 1521.)

§ 2193. Improvement of education in technical fields: grants for higher education in science and mathematics

(a)(1) The Secretary of Defense may, in accordance with the provisions of this subsection, carry out a program for awarding grants to students who have been accepted for enrollment in, or who are enrolled in, an institution of higher education as undergraduate or graduate students in scientific and engineering disciplines critical to the national security functions of the Department of Defense.

(2) Grant proceeds shall be disbursed on behalf of students awarded grants under this subsection to the institutions of higher education at which the students are enrolled. No grant proceeds shall be disbursed on behalf of a student until the student is enrolled at an institution of higher education.

(3) The amount of a grant awarded a student under this subsection may not exceed the student's cost of attendance.

(4) The amount of a grant awarded a student under this subsection shall not be reduced on the basis of the student's receipt of other forms of Federal student financial assistance, but shall be taken into account in determining the eligibility of the student for those other forms of Federal student financial assistance.

(5) The Secretary shall give priority to awarding grants under this subsection in a manner likely to stimulate the interest of women and members of minority groups in pursuing scientific and engineering careers. The Secretary may consider the financial need of applicants in making awards in accordance with such priority.

(b) The Secretary of Defense, in coordination with the Secretary of Education, may establish programs for the purpose of improving the mathematics and scientific knowledge and skills of elementary and secondary school students and faculty members.

(b) In this section:

(1) The term "institution of higher education" has the meaning given such term in section 101 of the Higher Education Act of 1965.

(2) The term "cost of attendance" has the meaning given such term in section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087ll).

(Added P.L. 101–510, § 247(a), Nov. 5, 1990, 104 Stat. 1521; amended P.L. 105–244, § 102(a)(2)(A), Oct. 7, 1998, 112 Stat. 1617; P.L. 106–65, § 580(c)(2), (3), (d)(2), Oct. 5, 1999, 113 Stat. 633.)

§ 2193a. Improvement of education in technical fields: general authority for support of elementary and secondary education in science and mathematics

The Secretary of Defense, in coordination with the Secretary of Education, may establish programs for the purpose of improving the mathematics and scientific knowledge and skills of elementary and secondary school students and faculty members.

(Added and transferred 2193(b) P.L. 106–65, § 580(c)(1), (2), Oct. 5, 1999, 113 Stat. 633.)

§ 2193b. Improvement of education in technical fields: program for support of elementary and secondary education in science, mathematics, and technology

(a) AUTHORITY FOR PROGRAM.—The Secretary of Defense may conduct a science, mathematics, and technology education improvement program known as the "Department of Defense STARBASE Program". The Secretary shall carry out the program in coordination with the Secretaries of the military departments.

(b) PURPOSE.—The purpose of the program is to improve knowledge and skills of students in kindergarten through twelfth grade in mathematics, science, and technology.

(c) STARBASE ACADEMIES.—(1)[1] The Secretary shall provide for the establishment of at least 25 academies under the program.

(2) The Secretary of Defense shall establish guidelines, criteria, and a process for the establishment of STARBASE programs in addition to those in operation on [Oct. 5, 1999].

(3) The Secretary may support the establishment and operation of any academy in excess of two academies in a State only if the Secretary has first authorized in writing the establishment of the academy and the costs of the establishment and operation of the academy are paid out of funds provided by sources other than the Department of Defense. Any such costs that are paid out of appropriated funds shall be considered as paid out of funds provided by such other sources if such sources fully reimburse the United States for the costs.

(d) PERSONS ELIGIBLE TO PARTICIPATE IN PROGRAM.—The Secretary shall prescribe standards and procedures for selection of persons for participation in the program.

(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the conduct of the program.

(f) AUTHORITY TO ACCEPT FINANCIAL AND OTHER SUPPORT.—The Secretary of Defense and the Secretaries of the military

[1] Section 580(b) of the National Defense Authorization Act for Fiscal Year 2000 (P.L. 106–65; 113 Stat. 632) provides:

(b) EXISTING STARBASE ACADEMIES.—While continuing in operation, the academies existing on [Oct. 5, 1999] under the Department of Defense STARBASE Program, as such program is in effect on such date, shall be counted for the purpose of meeting the requirement under section 2193b(c)(1) of title 10, United States Code (as added by subsection (a)), relating to the minimum number of STARBASE academies.

departments may accept financial and other support for the program from other departments and agencies of the Federal Government, State governments, local governments, and not-for-profit and other organizations in the private sector.

(g) ANNUAL REPORT.—Not later than 90 days after the end of each fiscal year, the Secretary of Defense shall submit to Congress a report on the program under this section. The report shall contain a discussion of the design and conduct of the program and an evaluation of the effectiveness of the program.

(h) STATE DEFINED.—In this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

(Added P.L. 106–65, § 580(a), Oct. 5, 1999, 113 Stat. 631.)

§ 2194. Education partnerships

(a) The Secretary of Defense shall authorize the director of each defense laboratory to enter into one or more education partnership agreements with educational institutions in the United States for the purpose of encouraging and enhancing study in scientific disciplines at all levels of education. The educational institutions referred to in the preceding sentence are local educational agency, colleges, universities, and any other nonprofit institutions that are dedicated to improving science, mathematics, and engineering education.

(b) Under a partnership agreement entered into with an educational institution under this section, the director of a defense laboratory may provide, and is encouraged to provide, assistance to the educational institution by—

(1) loaning defense laboratory equipment to the institution for any purpose and duration in support of such agreement that the director considers appropriate;

(2) notwithstanding the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) or any provision of law or regulation relating to transfers of surplus property, transferring to the institution any computer equipment, or other scientific equipment, that is—

(A) commonly used by educational institutions;

(B) surplus to the needs of the defense laboratory; and

(C) determined by the director to be appropriate for support of such agreement;

(3) making laboratory personnel available to teach science courses or to assist in the development of science courses and materials for the institution;

(4) involving faculty and students of the institution in defense laboratory research projects;

(5) cooperating with the institution in developing a program under which students may be given academic credit for work on defense laboratory research projects; and

(6) providing academic and career advice and assistance to students of the institution.

(c) The Secretary of Defense shall ensure that the director of each defense laboratory shall give a priority under this section to entering into an education partnership agreement with one or more historically Black colleges and universities and other minority

institutions referred to in paragraphs (3), (4), and (5) of section 312(b) of the Higher Education Act of 1965 (20 U.S.C. 1058(b)).

(d) The Secretary of Defense shall ensure that, in entering into education partnership agreements under this section, the director of a defense laboratory gives a priority to providing assistance to educational institutions serving women, members of minority groups, and other groups of individuals who traditionally are involved in the engineering and science professions in disproportionately low numbers.

(e) In this section:

(1) The term "defense laboratory" means any laboratory, product center, test center, depot, training and educational organization, or operational command under the jurisdiction of the Department of Defense.

(2) The term "local educational agency" has the meaning given such term in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

(Added P.L. 101–510, § 247(a), Nov. 5, 1990, 104 Stat. 1522; amended P.L. 103–382, § 391(b)(4), Oct. 20, 1994, 108 Stat. 4022; P.L. 104–106, § 1503(a)(19), Feb. 10, 1996, 110 Stat. 512; P.L. 106–398, § 1[253], Oct. 30, 2000, 114 Stat. 1654, 1654A–49.)

§ 2195. Department of Defense cooperative education programs

(a) The Secretary of Defense shall ensure that the director of each defense laboratory establishes, in association with one or more public or private colleges or universities in the United States or one or more consortia of colleges or universities in the United States, cooperative work-education programs for undergraduate and graduate students.

(b) Under a cooperative work-education program established under subsection (a), a director referred to in that subsection may, without regard to any applicable non-statutory limitation on the number of authorized personnel or on the aggregate amount of any personnel cost—

(1) make an offer for participation in the cooperative work-education program directly to a student and appoint such student to an entry-level position of employment in the laboratory of such director;

(2) pay such person a rate of basic pay, not to exceed the maximum rate of pay provided for grade GS–9 under the General Schedule under section 5332 of title 5, that is competitive with compensation levels provided for entry-level positions in similar industry-sponsored cooperative work-education programs;

(3) pay all travel expenses between the college or university in which the student is enrolled and the laboratory concerned for not more than six round trips per year; and

(4) pay all or part of such fees, charges, and costs related to the participation of such student in the cooperative work-education program as tuition, matriculation fees, charges for library and laboratory services, materials, and supplies, and the purchase or rental price of books.

(c) A director of a defense laboratory may—

(1) require a student, as a condition for receiving payments referred to in subsection (b)(4), to enter into a written agreement to continue employment in such defense laboratory for a period of service specified in the agreement; or

(2) make such payments without requiring such an agreement.

(Added P.L. 101–510, § 247(a), Nov. 5, 1990, 104 Stat. 1522.)

§ 2196. Manufacturing engineering education: grant program

(a) ESTABLISHMENT OF GRANT PROGRAM.—(1) The Secretary of Defense shall establish a program under which the Secretary makes grants to support—

(A) the enhancement of existing programs in manufacturing engineering education; or

(B) the establishment of new programs in manufacturing engineering education that meet such requirements.

(2) Grants under this section may be made to institutions of higher education or to consortia of such institutions.

(3) The Secretary shall establish the program in consultation with the Secretary of Education, the Director of the National Science Foundation, and the Director of the Office of Science and Technology Policy.

(b) NEW PROGRAMS IN MANUFACTURING ENGINEERING EDUCATION.—A program in manufacturing engineering education to be established at an institution of higher education may be considered to be a new program for the purpose of subsection (a)(1)(B) regardless of whether the program is to be conducted—

(1) within an existing department in a school of engineering of the institution;

(2) within a manufacturing engineering department to be established separately from the existing departments within such school of engineering; or

(3) within a manufacturing engineering school or center to be established separately from an existing school of engineering of such institution.

(c) MINIMUM NUMBER OF GRANTS FOR NEW PROGRAMS.—Of the total number of grants awarded pursuant to this section, at least one-third shall be awarded for the purpose stated in subsection (a)(1)(B).

(d) GEOGRAPHICAL DISTRIBUTION OF GRANTS.—In awarding grants under this subsection, the Secretary shall, to the maximum extent practicable, avoid geographical concentration of grant awards.

(e) COORDINATION OF GRANT PROGRAM WITH THE NATIONAL SCIENCE FOUNDATION.—The Secretary of Defense and the Director of the National Science Foundation shall enter into an agreement for carrying out the grant program established pursuant to this section. The agreement shall include procedures to ensure that the grant program is fully coordinated with similar existing programs of the National Science Foundation.

(f) COVERED PROGRAMS.—(1) A program of engineering education supported with a grant awarded pursuant to this section shall meet the requirements of this section.

(2) Such a grant may be made for a program of education to be conducted at the undergraduate level, at the graduate level, or at both the undergraduate and graduate levels.

(g) COMPONENTS OF PROGRAM.—The program of education for which such a grant is made shall be a consolidated and integrated multidisciplinary program of education having each of the following components:

(1) Multidisciplinary instruction that encompasses the total manufacturing engineering enterprise and that may include—

(A) manufacturing engineering education and training through classroom activities, laboratory activities, thesis projects, individual or team projects, and visits to industrial facilities, consortia, or centers of excellence in the United States and foreign countries;

(B) faculty development programs;

(C) recruitment of educators highly qualified in manufacturing engineering;

(D) presentation of seminars, workshops, and training for the development of specific research or education skills; and

(E) activities involving interaction between the institution of higher education conducting the program and industry, including programs for visiting scholars or industry executives.

(2) Opportunities for students to obtain work experience in manufacturing through such activities as internships, summer job placements, or cooperative work-study programs.

(3) Faculty and student research that is directly related to, and supportive of, the education of undergraduate or graduate students in advanced manufacturing science and technology because of—

(A) the increased understanding of advanced manufacturing science and technology that is derived from such research; and

(B) the enhanced quality and effectiveness of the instruction that result from that increased understanding.

(h) GRANT PROPOSALS.—The Secretary of Defense, in coordination with the Director of the National Science Foundation, shall solicit from institutions of higher education in the United States (and from consortia of such institutions) proposals for grants to be made pursuant to this section for the support of programs of manufacturing engineering education that are consistent with the purposes of this section.

(i) MERIT COMPETITION.—Applications for grants shall be evaluated on the basis of merit pursuant to competitive procedures prescribed by the Secretary in consultation with the Director of the National Science Foundation.

(j) SELECTION CRITERIA.—The Secretary may select a proposal for the award of a grant pursuant to this section if the proposal, at a minimum, does each of the following:

(1) Contains innovative approaches for improving engineering education in manufacturing technology.

(2) Demonstrates a strong commitment by the proponents to apply the resources necessary to achieve the objectives for which the grant is to be made.

(3) Provides for the conduct of research that supports the instruction to be provided in the proposed program and is likely to improve manufacturing engineering and technology.

(4) Demonstrates a significant level of involvement of United States industry in the proposed instructional and research activities.

(5) Is likely to attract superior students.

(6) Proposes to involve fully qualified faculty personnel who are experienced in research and education in areas associated with manufacturing engineering and technology.

(7) Proposes a program that, within three years after the grant is made, is likely to attract from sources other than the Federal Government the financial and other support necessary to sustain such program.

(8) Proposes to achieve a significant level of participation by women, members of minority groups, and individuals with disabilities through active recruitment of students from among such persons.

(k) FEDERAL SUPPORT.—The amount of financial assistance furnished to an institution under this section may not exceed 50 percent of the estimated cost of carrying out the activities proposed to be supported in part with such financial assistance for the period for which the assistance is to be provided.

(Added P.L. 102–190, § 825(a), Dec. 5, 1991, 105 Stat. 1438.)

§ 2197. Manufacturing experts in the classroom

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense, in consultation with the Secretary of Education and the Secretary of Commerce, shall conduct a program to support the following activities of one or more manufacturing experts at institutions of higher education:

(1) Identifying the education and training requirements of United States manufacturing firms located in the same geographic region as an institution participating in the program.

(2) Assisting in the development of teaching curricula for classroom and in-factory education and training classes at such an institution.

(3) Teaching such classes and overseeing the teaching of such classes by others.

(4) Improving the knowledge and expertise of permanent faculty and staff of such an institution.

(5) Marketing the programs and facilities of such an institution to firms referred to in paragraph (1).

(6) Coordinating the activities described in the other provisions of this subsection with other programs conducted by the Federal Government, any State, any local government, or any private, nonprofit organization to modernize United States manufacturing firms, especially the regional centers for the transfer of manufacturing technology and programs receiving financial assistance under section 2196 of this title.

(b) MERIT COMPETITION.—Applications for assistance under this section shall be evaluated on the basis of merit pursuant to competitive procedures prescribed by the Secretary.

(c) SELECTION CRITERIA.—The Secretary shall select institutions for the award of financial assistance under this section from among institutions submitting applications for such assistance that—

(1) demonstrate that the proposed activities are of an appropriate scale and a sufficient quality to ensure long term improvement in the applicant's capability to serve the education and training needs of United States manufacturing firms in the same region as the applicant;

(2) demonstrate a significant level of industry involvement and support;

(3) demonstrate attention to the needs of any United States industries that supply manufactured products to the Department of Defense or to a contractor of the Department of Defense; and

(4) meet such other criteria as the Secretary may prescribe.

(d) FEDERAL SUPPORT.—The amount of financial assistance furnished to an institution under this section may not exceed 50 percent of the estimated cost of carrying out the activities proposed to be supported in part with such financial assistance for the period for which the assistance is to be provided. In no event may the amount of the financial assistance provided to an institution exceed $250,000 per year. The period for which financial assistance is provided an institution under this section shall be at least two years unless such assistance is earlier terminated for cause determined by the Secretary.

(e) MANUFACTURING EXPERT DEFINED.—In this section, the term "manufacturing expert" means manufacturing managers and workers having experience in the organization of production and education and training needs and other experts in manufacturing.

(Added P.L. 102–190, § 825(a), Dec. 5, 1991, 105 Stat. 1440; amended P.L. 102–484, § 4238, Oct. 23, 1992, 106 Stat. 2694.)

§ 2198. Management training program in Japanese language and culture

(a) The Secretary of Defense, in coordination with the National Science Foundation, shall establish a program for the making of grants on a competitive basis to United States institutions of higher education and other United States not-for-profit organizations for the conduct of programs for scientists, engineers, and managers to learn Japanese language and culture.

(b) The Secretary of Defense shall prescribe in regulations the criteria for awarding a grant under the program for activities of an institution or organization referred to in subsection (a), including the following:

(1) Whether scientists, engineers, and managers of defense laboratories and Department of Energy laboratories are permitted a level of participation in such activities that is beneficial to the development and application of defense critical technologies by such laboratories.

(2) Whether such activities include the placement of United States scientists, engineers, and managers in Japanese government and industry laboratories—

(A) to improve the knowledge of such scientists, engineers, and managers in (i) Japanese language and culture, and (ii) the research and development and management practices of such laboratories; and

(B) to provide opportunities for the encouragement of technology transfer from Japan to the United States.

(3) Whether an appropriate share of the costs of such activities will be paid out of funds derived from non-Federal Government sources.

(c) In this section, the term "defense critical technology" means a technology 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.

(Added P.L. 102–190, § 828(a), Dec. 5, 1991, 105 Stat. 1444; amended P.L. 103–35, § 201(c)(3), May 31, 1993, 107 Stat. 98; P.L. 105–85, § 1073(a)(39), Nov. 18, 1997, 111 Stat. 1902.)

§ 2199. Definitions

In this chapter:

(1) The term "defense laboratory" means a laboratory operated by the Department of Defense or owned by the Department of Defense and operated by a contractor or a facility of a Defense Agency at which research and development activities are conducted.

(2) The term "institution of higher education" has the meaning given such term in section 101 of the Higher Education Act of 1965.

(3) The term "regional center for the transfer of manufacturing technology" means a regional center for the transfer of manufacturing technology referred to in section 25(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278k).

(Added P.L. 102–190, § 825(a), Dec. 5, 1991, 105 Stat. 1441; amended P.L. 105–244, § 102(a)(2)(B), Oct. 7, 1998, 112 Stat. 1617.)

CHAPTER 112—INFORMATION SECURITY SCHOLARSHIP PROGRAM

Sec.
2200. Programs; purpose.
2200a. Scholarship program.
2200b. Grant program.
2200c. Centers of Academic Excellence in Information Assurance Education.
2200d. Regulations.
2200e. Definitions.
2200f. Inapplicability to Coast Guard.

§ 2200. Programs; purpose

(a) IN GENERAL.—To encourage the recruitment and retention of Department of Defense personnel who have the computer and network security skills necessary to meet Department of Defense information assurance requirements, the Secretary of Defense may carry out programs in accordance with this chapter to provide financial support for education in disciplines relevant to those requirements at institutions of higher education.

(b) TYPES OF PROGRAMS.—The programs authorized under this chapter are as follows:

(1) Scholarships for pursuit of programs of education in information assurance at institutions of higher education.

(2) Grants to institutions of higher education.

(Added P.L. 106–398, § 1[922(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–233.)

§ 2200a. Scholarship program

(a) AUTHORITY.—The Secretary of Defense may, subject to subsection (g), provide financial assistance in accordance with this section to a person—

(1) who is pursuing an associate, baccalaureate, or advanced degree, or a certification, in an information assurance discipline referred to in section 2200(a) of this title at an institution of higher education; and

(2) who enters into an agreement with the Secretary as described in subsection (b).

(b) SERVICE AGREEMENT FOR SCHOLARSHIP RECIPIENTS.—(1) To receive financial assistance under this section—

(A) a member of the armed forces shall enter into an agreement to serve on active duty in the member's armed force for the period of obligated service determined under paragraph (2);

(B) an employee of the Department of Defense shall enter into an agreement to continue in the employment of the department for the period of obligated service determined under paragraph (2); and

(C) a person not referred to in subparagraph (A) or (B) shall enter into an agreement—

(i) to enlist or accept a commission in one of the armed forces and to serve on active duty in that armed force for the period of obligated service determined under paragraph (2); or

(ii) to accept and continue employment in the Department of Defense for the period of obligated service determined under paragraph (2).

(2) For the purposes of this subsection, the period of obligated service for a recipient of financial assistance under this section shall be the period determined by the Secretary of Defense as being appropriate to obtain adequate service in exchange for the financial assistance and otherwise to achieve the goals set forth in section 2200(a) of this title. In no event may the period of service required of a recipient be less than the period equal to three-fourths of the total period of pursuit of a degree for which the Secretary agrees to provide the recipient with financial assistance under this section. The period of obligated service is in addition to any other period for which the recipient is obligated to serve on active duty or in the civil service, as the case may be.

(3) An agreement entered into under this section by a person pursuing an academic degree shall include terms that provide the following:

(A) That the period of obligated service begins on a date after the award of the degree that is determined under the regulations prescribed under section 2200d of this title.

(B) That the person will maintain satisfactory academic progress, as determined in accordance with those regulations, and that failure to maintain such progress constitutes grounds for termination of the financial assistance for the person under this section.

(C) Any other terms and conditions that the Secretary of Defense determines appropriate for carrying out this section.

(c) AMOUNT OF ASSISTANCE.—The amount of the financial assistance provided for a person under this section shall be the amount determined by the Secretary of Defense as being necessary to pay all educational expenses incurred by that person, including tuition, fees, cost of books, laboratory expenses, and expenses of room and board. The expenses paid, however, shall be limited to those educational expenses normally incurred by students at the institution of higher education involved.

(d) USE OF ASSISTANCE FOR SUPPORT OF INTERNSHIPS.—The financial assistance for a person under this section may also be provided to support internship activities of the person at the Department of Defense in periods between the academic years leading to the degree for which assistance is provided the person under this section.

(e) REFUND FOR PERIOD OF UNSERVED OBLIGATED SERVICE.—(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.

(f) EFFECT OF DISCHARGE IN BANKRUPTCY.—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).

(g) ALLOCATION OF FUNDING.—Not less than 50 percent of the amount available for financial assistance under this section for a fiscal year shall be available only for providing financial assistance for the pursuit of degrees referred to in subsection (a) at institutions of higher education that have established, improved, or are administering programs of education in information assurance under the grant program established in section 2200b of this title, as determined by the Secretary of Defense.

(Added P.L. 106–398, § 1[922(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–234.)

§ 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 P.L. 106–398, § 1[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 P.L. 106–398, § 1[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 P.L. 106–398, § 1[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 P.L. 106–398, § 1[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 P.L. 106–398, § 1[922(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–236.)

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CHAPTER 131—PLANNING AND COORDINATION

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§ 2201. Apportionment of funds: authority for exemptions; 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 3732(a) of the Revised Statutes (41 U.S.C. 11(a)).

(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 ex-

pense under section 3732(a) of the Revised Statutes (41 U.S.C. 11(a)).

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

(Added P.L. 100–370, § 1(d)(1), July 19, 1988, 102 Stat. 841; amended P.L. 106–65, § 1032(a)(1), Oct. 5, 1999, 113 Stat. 751.)

§ 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; Dec. 4, 1987, P.L. 100–180, § 1202, 101 Stat. 1153; revised in its entirety P.L. 103–355, § 3061(a), Oct. 13, 1994, 108 Stat. 3336.)

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

§ 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 P.L. 87–651, § 207(a), Sept. 7, 1962, 76 Stat. 520.)

§ 2205. Reimbursements

(a) AVAILABILITY OF REIMBURSEMENTS.—Reimbursements made to appropriations of the Department of Defense or a depart-

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

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

§ 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 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).

(Added P.L. 87–651, § 207(a), Sept. 7, 1962, 76 Stat. 520; amended P.L. 104–106, § 801, Feb. 10, 1996, 110 Stat. 389.)

§ 2208. Working-capital funds [1]

(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; 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

[1] Section 8006 of the Department of Defense Appropriations Act, 2001 (P.L. 106–259; 114 Stat. 675), provides:

SEC. 8006. During the current fiscal year [fiscal year 2001], cash balances in working capital funds of the Department of Defense established pursuant to section 2208 of title 10, United States Code, may be maintained in only such amounts as are necessary at any time for cash disbursements to be made from such funds: *Provided*, That transfers may be made between such funds: *Provided further*, That transfers may be made between working capital funds and the "Foreign Currency Fluctuations, Defense" appropriation and the "Operation and Maintenance" appropriation accounts in such amounts as may be determined by the Secretary of Defense, with the approval of the Office of Management and Budget, except that such transfers may not be made unless the Secretary of Defense has notified the Congress of the proposed transfer. Except in amounts equal to the amounts appropriated to working capital funds in this Act, no obligations may be made against a working capital fund to procure or increase the value of war reserve material inventory, unless the Secretary of Defense has notified the Congress prior to any such obligation.

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 $100,000:

(A) An unspecified minor military construction project under section 2805(c)(1) 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)(1) 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 sub-

mitted 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.

(Added P.L. 87–651, § 207(a), Sept. 7, 1962, 76 Stat. 521; amended P.L. 97–295, § 1(22), Oct. 12, 1982, 96 Stat. 1290; P.L. 98–94, § 1204(a), Sept. 24, 1983, 97 Stat. 683; P.L. 98–525, § 305, Oct. 19, 1984, 98 Stat. 2513; P.L. 100–26, § 7(d)(2), April 21, 1987, 101 Stat. 280; P.L. 101–510, §§ 801, 1301(6), Nov. 5, 1990, 104 Stat. 1588, 1668; P.L. 102–172, § 8137, Nov. 26, 1991, 105 Stat. 1212; P.L. 102–484, § 374, Oct. 23, 1992, 106 Stat. 2385; P.L. 103–160, § 158(b), Nov. 30, 1993, 107 Stat. 1582; P.L. 105–85, § 1011(a)–(b), Nov. 18, 1997, 111 Stat. 1873; amended identically P.L. 105–261, § 1007(e)(1), 1008(a), Oct. 17, 1998, 112 Stat. 2115 & P.L. 105–262, § 8146(d), Oct. 17, 1998, 112 Stat. 2340; P.L. 106–65, §§ 331(a)(1), 332, 1066(a)(16), Oct. 5, 1999, 113 Stat. 566, 567, 771; P.L. 106–398, § 1[341(f)], Oct. 30, 2000, 114 Stat. 1654, 1654A–64.)

§ 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 P.L. 87–651, § 207(a), Sept. 7, 1962, 76 Stat. 522.)

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

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

§ 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 administra-

tive 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 P.L. 105–261, § 911(a), Oct. 17, 1998, 112 Stat. 2097 [prior § 2212 repealed P.L. 103–355, § 2454(c)(1), Oct. 13, 1994, 108 Stat. 3326]; P.L. 106–65, § 1066(a)(17), Oct. 5, 1999, 113 Stat. 771.)

§ 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 P.L. 102–190, § 317(a), Dec. 5, 1991, 105 Stat. 1338.)

§ 2214. Transfer of funds: procedure and limitations [2]

(a) PROCEDURE FOR TRANSFER OF FUNDS.—Whenever authority is provided in an appropriation Act to transfer amounts in working

[2] Section 8005 of the Department of Defense Appropriations Act, 2001 (P.L. 106–259; 114 Stat. 674), provides:

Continued

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 Defense 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 P.L. 101–510, § 1482(c), Nov. 5, 1990, 104 Stat. 1709.)

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

(a) CERTIFICATION REQUIRED.—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 committees specified in subsection (b) a certification that making those funds available to such other

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SEC. 8005. Upon determination by the Secretary of Defense that such action is necessary in the national interest, he may, with the approval of the Office of Management and Budget, transfer not to exceed $2,000,000,000 of working capital funds of the Department of Defense or funds made available in this Act to the Department of Defense for military functions (except military construction) between such appropriations or funds or any subdivision thereof, to be merged with and to be available for the same purposes, and for the same time period, as the appropriation or fund to which transferred: *Provided*, That such authority to transfer may not be used unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which funds are requested has been denied by the Congress: *Provided further*, That the Secretary of Defense shall notify the Congress promptly of all transfers made pursuant to this authority or any other authority in this Act: *Provided further*, That no part of the funds in this Act shall be available to prepare or present a request to the Committees on Appropriations for reprogramming of funds, unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which reprogramming is requested has been denied by the Congress.

department or agency is in the national security interest of the United States.

(b) CONGRESSIONAL COMMITTEES.—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.

(Added P.L. 103–160, § 1106(a)(1), Nov. 30, 1993, 107 Stat. 1750 [former 2215 repealed by § 1301(7) of P.L. 101–510]; amended P.L. 104–106, § 1502(a)(14), Feb. 10, 1996, 110 Stat. 503; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 2216. Defense Modernization Account

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

(b) 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.

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

(2) Funds referred to in paragraph (1) 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.

(c) SCOPE OF USE OF FUNDS.—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.

(d) AUTHORIZED USE OF FUNDS.—Funds available from the Defense Modernization Account pursuant to subsection (f) or (g) may be used for the following purposes:

(1) 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.

(2) 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.—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.

(i) QUARTERLY REPORTS.—(1) Not later than 15 days after the end of each calendar quarter, the Secretary of Defense shall submit to the congressional committees specified in paragraph (2) a report on the Defense Modernization Account. Each such report shall set forth the following:

(A) The amount and source of each credit to the account during that quarter.

(B) The amount and purpose of each transfer from the account during that quarter.

(C) The balance in the account at the end of the quarter and, of such balance, the amount attributable to transfers to the account from each Secretary concerned.

(2) The committees referred to in paragraph (1) are 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.

(j) 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.

(3) 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.

(Added P.L. 104–106, § 912(a)(1), Feb. 10, 1996, 110 Stat. 407 [former § 2216 repealed by § 1301(8) of P.L. 101–510]; amended P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

[§ 2216a. Repealed. Pub. L. 105–261, § 1008(b), Oct. 17, 1998, 112 Stat. 2117]

§ 2217. Comparable budgeting for common procurement weapon system

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

§ 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), and for the costs of acquisition of 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 fiscal years after fiscal year 1993 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 508 and 510 of the Merchant Marine Act of 1936 (46 U.S.C. App. 1158, 1160), shall be deposited in the Fund.

(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) Not more than a total of five vessels built in foreign ship yards may be purchased with funds in the National Defense Sealift Fund pursuant to subsection (c)(1).

(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).

(j) AUTHORITY FOR CERTAIN USE OF FUNDS.—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).

(k) 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.

(l) 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) 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.

(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).

(4) 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.

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

(Added P.L. 102–484, § 1024(a), Oct. 23, 1992, 106 Stat. 2486; amended P.L. 102–396, Oct. 6, 1992, 106 Stat. 1896; P.L. 104–106, §§ 1014(a), 1502(a)(15), Feb. 10, 1996, 110 Stat. 423, 503; P.L. 106–65, §§ 1014(b), 1015, 1067(1), Oct. 5, 1999, 113 Stat. 742, 743, 774; P.L. 106–398, § 1[1011], Oct. 30, 2000, 114 Stat. 1654, 1654A–251.)

§ 2219. 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 P.L. 103–337, § 373(a), Oct. 5, 1994, 108 Stat. 2736; amended P.L. 104–106, § 341, Feb. 10, 1996, 110 Stat. 265.)

§ 2220. Performance based management: acquisition programs

(a) ESTABLISHMENT OF GOALS.—(1) 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.

(2) The Under Secretary of Defense (Comptroller) shall evaluate the cost goals proposed for each major defense acquisition program of the Department.

(b) ANNUAL REPORTING REQUIREMENT.—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.

(c) PERFORMANCE EVALUATION.—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.

(Added P.L. 103–355, § 5001(a)(1), Oct. 13, 1994, 108 Stat. 3349; amended P.L. 104–106, §§ 1503(a)(20), 4321(b)(1), Feb. 10, 1996, 110 Stat. 512, 671; P.L. 105–85, § 841(a), Nov. 18, 1997, 111 Stat. 1843.)

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

§ 2222. Biennial financial management improvement plan

(a) BIENNIAL PLAN REQUIRED.—The Secretary of Defense shall submit to Congress a biennial strategic plan for the improvement of financial management within the Department of Defense. The plan shall be submitted not later than September 30 of each even-numbered year.

(b) CONCEPT OF OPERATIONS.—Each plan under subsection (a) shall include a statement of the Secretary of Defense's concept of operations for the financial management of the Department of Defense. Each such statement shall be a clear description of the manner in which the Department's financial management operations are carried out or will be carried out under the improvements set forth in the plan under subsection (a), including identification of operations that must be performed.

(c) MATTERS TO BE ADDRESSED IN PLAN.—(1) Each plan under subsection (a) shall address all aspects of financial management within the Department of Defense, including the finance systems, accounting systems, and data feeder systems of the Department that support financial functions of the Department.

(2) For the purposes of paragraph (1), a data feeder system is an automated or manual system from which information is derived for a financial management system or an accounting system.

(Added P.L. 105–85, § 1008(a)(1), Nov. 18, 1997, 111 Stat. 1870.)

§ 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 5125 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1425), 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 5125 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1425), 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 5002 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401).

(3) The term "national security system" has the meaning given that term by section 5142 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1452).

(Added P.L. 105–261, § 331(a), Oct. 17, 1998, 112 Stat. 1967; P.L. 106–398, § 1[811(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–210.)

§ 2224. Defense Information Assurance Program [3]

(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.

[3] Subsections (a) through (c) of section 921 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654, 1654A–233) provide:

(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.

(b) OBJECTIVES AND MINIMUM REQUIREMENTS.—(1) 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.

(2) The program shall at a minimum meet the requirements of sections 3534 and 3535 of title 44.

(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. The program strategy shall include the following:

(1) A vulnerability and threat assessment of elements of the defense and supporting nondefense 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) ANNUAL REPORT.—Each year, at or about the time the President submits the annual budget for the next fiscal year pursuant to section 1105 of title 31, the Secretary shall submit to Congress a report on the Defense Information Assurance Program. Each report shall include the following:

(1) Progress in achieving the objectives of the program.

(2) A summary of the program strategy and any changes in that strategy.

(3) A description of the information assurance activities of the Office of the Secretary of Defense, Joint Staff, unified and specified commands, Defense Agencies, military departments, and other supporting activities of the Department of Defense.

(4) Program and budget requirements for the program for the past fiscal year, current fiscal year, budget year, and each succeeding fiscal year in the remainder of the current future-years defense program.

(5) An identification of critical deficiencies and shortfalls in the program.

(6) Legislative proposals that would enhance the capability of the Department to execute the program.

(7) A summary of the actions taken in the administration of sections 3534 and 3535 of title 44 within the Department of Defense.

(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 P.L. 106–65, § 1043(a), Oct. 5, 1999, 113 Stat. 760; amended P.L. 106–398, § 1[1063], Oct. 30, 2000, 114 Stat. 1654, 1654A–274.)

§ 2225. Information technology purchases: tracking and management [4]

(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] Subsections (b)(1) and (c) of section 812 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654, 1654A–214) provide:

(b) TIME FOR IMPLEMENTATION; APPLICABILITY.—(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 [Oct. 30, 2001].

(c) GAO REPORT.—Not later than 15 months after [Oct. 30, 2000], the Comptroller General shall submit to the congressional defense committees a report on the collection of data under such section 2225. The report shall include the Comptroller General's assessment of the extent to which the collection of data meets the requirements of that section.

(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—

(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 5122 and 5123 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1422, 1423).

(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)[5] 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:

[5] Subsection (d) applies with respect to purchases described in that subsection for which solicitations of offers are issued on or after October 30, 2001, pursuant to section 812(b)(2) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654, 1654A–214).

(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 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)).

(2) The term "simplified acquisition threshold" has the meaning given the term in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

(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 P.L. 106–398, § 1[812(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–212.)

§ 2226. Contracted property and services: prompt payment of vouchers [6]

(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 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C.

[6] Section 1006(c) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654, 1654A–248) provides:

(c) CONDITIONAL REQUIREMENT FOR REPORT.—(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)).

403(12))), or other deliverable items provided by the contractor under a contract funded by the Department of Defense.

(Added P.L. 106–398, § 1[1006(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–247.)

§ 2227. Electronic submission and processing of claims for contract payments [7]

(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.

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[7] Subsections (b) and (c) of section 1008 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654, 1654A–250) provide:

(b) IMPLEMENTATION PLAN.—Not later than March 30, 2001, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a plan for the implementation of the requirements imposed under section 2227 of title 10, United States Code (as added by subsection (a)). The plan shall provide for each of the matters specified in subsection (d) of that section.

(c) APPLICABILITY.—(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.

(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 P.L. 106–398, § 1[1008(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–249.)

CHAPTER 133—FACILITIES FOR RESERVE COMPONENTS

Sec.
2231. Reference to chapter 1803.
[2232 to 2239. Transferred.]

§ 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 P.L. 103–337, § 1664(b)(11), Oct. 5, 1994, 108 Stat. 3011.)

[Former § 2231 and §§ 2232 to 2239 transferred to §§ 18231 to § 18239]

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.
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 dependents' schools.
2244. Security investigations.
2245. Use of aircraft for proficiency flying: limitation.
2246. Department of Defense golf courses: limitation on use of appropriated funds.
2247. Use of appropriated funds for operation of Armed Forces Recreation Center, Europe: limitation.
2248. Purchase of surety bonds: prohibition.
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 flags: prohibition on use of funds to arbitrarily exclude flag; position and manner of display.

§ 2241. Availability of appropriations for certain purposes [1]

(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:

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[1] Section 8019 of the Department of Defense Appropriations Act, 1991 (P.L. 101–511), provides:

SEC. 8019. None of the funds appropriated by this Act 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.

Section 9005 of the Department of Defense Appropriations Act, 1993 (P.L. 102–396; 106 Stat. 1900), as amended, provides:

SEC. 9005. During the current fiscal year and hereafter, no part of any appropriation or any other funds available to the Department of Defense, except for purchases for amounts not greater than the simplified acquisition threshold covered by section 2304(g) of title 10, United States Code, shall be available for the procurement of any article or item of food, clothing, tents, tarpaulins, covers, cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric, canvas products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles), or any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials, or specialty metals including stainless steel flatware, or hand or measuring tools, not grown, reprocessed, reused, or produced in the United States or its possessions, except to the extent that the Secretary of the Department concerned shall determine that satisfactory quality and sufficient quantity of any articles or items of food, individual equipment, tents, tarpaulins, covers, or clothing or any form of cotton or other natural fiber products, woven silk and

(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.

(Added P.L. 100–370, § 1(e)(1), July 19, 1988, 102 Stat. 844.)

§ 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;

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woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric, canvas products, wool, or specialty metals including stainless steel flatware, grown, reprocessed, reused, or produced in the United States or its possessions cannot be procured as and when needed at United States market prices and except procurements outside the United States in support of combat operations, procurements by vessels in foreign waters, and emergency procurements or procurements of perishable foods by establishments located outside the United States for the personnel attached thereto: *Provided,* That nothing herein shall preclude the procurement of specialty metals or chemical warfare protective clothing produced outside the United States or its possessions when such procurement is necessary 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 where such procurement is necessary in furtherance of agreements with foreign governments in which both governments agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, so long as such agreements with foreign governments comply, where applicable, with the requirements of section 36 of the Arms Export Control Act and with section 2457 of title 10, United States Code: *Provided further,* That nothing herein shall preclude the procurement of foods manufactured or processed in the United States or its possessions.

Section 8053 of the Department of Defense Appropriations Act, 1998 (P.L. 105–56; 111 Stat. 1232), provides:

SEC. 8053. None of the funds provided in this Act and hereafter shall be available for use by a military department to modify an aircraft, weapon, ship or other item of equipment, that the military department concerned plans to retire or otherwise dispose of within 5 years after completion of the modification: *Provided*, That this prohibition shall not apply to safety modifications: *Provided further*, That this prohibition may be waived by the Secretary of a military department if the Secretary determines it is in the best national security interest of the United States to provide such waiver and so notifies the congressional defense committees in writing.

Section 8118 of the Department of Defense Appropriations Act, 1999 (P.L. 105–262; 112 Stat. 2331), provides:

SEC. 8118. 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.

(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 P.L. 100–370, § 1(e)(1), July 19, 1988, 102 Stat. 844.)

§ 2243. Authority to use appropriated funds to support student meal programs in overseas dependents' schools

(a) AUTHORITY.—Subject to subsection (b), amounts appropriated to the Department of Defense for the operation of the defense dependents' education system may be used by the Secretary of Defense to enable an overseas meal program to provide students enrolled in that system 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 Department of Defense dependents' schools which are located outside the United States.

(Added P.L. 101–189, § 326(a), Nov. 29, 1989, 103 Stat. 1415; amended P.L. 106–78, § 752(b)(7), Oct. 22, 1999, 113 Stat. 1169.)

§ 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 P.L. 101–510, § 904(a), Nov. 5, 1990, 104 Stat. 1621; amended P.L. 102–190, § 1061(a)(11), Dec. 5, 1991, 105 Stat. 1473.)

§ 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" has the meaning given that term in Department of Defense Directive 1340.4.

(Added P.L. 101–510, § 1481(e), Nov. 5, 1990, 104 Stat. 1706.)

§ 2246. 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 P.L. 103–160, § 312(a), Nov. 30, 1993, 107 Stat. 1618.)

§ 2247. 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 P.L. 103–337, § 372(a), Oct. 5, 1994, 108 Stat. 2735; amended P.L. 105–85, § 375, Nov. 18, 1997, 111 Stat. 1708.)

§ 2248. Purchase of surety bonds: prohibition

Funds appropriated or otherwise made available to the Department of Defense for fiscal years 1995 through 1999 may not be obligated or expended for the purchase of surety bonds or other guar-

antees of financial responsibility in order to guarantee the performance of any direct function of the Department of Defense.

(Added P.L. 103–337, § 1063(a), Oct. 5, 1994, 108 Stat. 2848.)

§ 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 as § 2247 by P.L. 103–355, § 7202(a)(1), Oct. 13, 1994, 108 Stat. 3379; redesignated as § 2249 by P.L. 104–106, § 4321(b)(2)(A), Feb. 10, 1996, 110 Stat. 672.)

§ 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 Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A));

(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 P.L. 104–106, § 1341(a), Feb. 10, 1996, 110 Stat. 485; amended P.L. 105–85, § 1073(a)(40), Nov. 18, 1997, 111 Stat. 1902; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 2249b. Display of State flags: prohibition on use of funds to arbitrarily exclude flag; position and manner of display

(a) PROHIBITION ON USE OF FUNDS.—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.

(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 P.L. 104–201, § 1071(a), Sept. 23, 1996, 110 Stat. 2656; amended P.L. 105–225, § 4(a)(1), Aug. 12, 1998, 112 Stat. 1498.)

SUBCHAPTER II—MISCELLANEOUS ADMINISTRATIVE AUTHORITY

Sec.
2251. Household furnishings and other property: personnel outside the United States or in Alaska or Hawaii.
2252. Rewards: missing property.
2253. Motor vehicles.
2254. Treatment of reports of aircraft accident investigations.
2255. Aircraft accident investigation boards: composition requirements.
2257. Use of recruiting materials for public relations.
2259. Transit pass program: personnel in poor air quality areas.

§ 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 P.L. 100–370, § 1(e)(1), July 19, 1988, 102 Stat. 844.)

§ 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 P.L. 100–370, § 1(e)(1), July 19, 1988, 102 Stat. 844.)

§ 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 vehicles 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 P.L. 100–370, § 1(e)(1), July 19, 1988, 102 Stat. 844; amended P.L. 105–85, § 805, Nov. 18, 1997, 111 Stat. 1834.)

§ 2254. Treatment of reports of aircraft accident investigations [2]

(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—

[2] Section 1065(c) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (P.L. 105–261; 112 Stat. 2134) provides:

(c) UNIFORM REGULATIONS FOR PROVISION OF ACCIDENT INVESTIGATION UPDATE INFORMATION.—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.

(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 P.L. 102–484, § 1071(a)(1), Oct. 23, 1992, 106 Stat. 2507.)

§ 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.—(1) 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—

(A) it is not practicable to meet the requirement because of—

(i) the remote location of the aircraft accident;

(ii) an urgent need to promptly begin the investigation; or

(iii) 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

(B) the objectivity and independence of the aircraft accident investigation board will not be compromised.

(2) The Secretary shall notify Congress of a waiver exercised under this subsection and the reasons therefor.

(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 P.L. 104–201, § 911(a)(1), Sept. 23, 1996, 110 Stat. 2621.)

§ 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 P.L. 106–65, § 1043(a), Oct. 5, 1999, 113 Stat. 624.)

§ 2259. Transit pass program: personnel in poor air quality areas[3]

(a) ESTABLISHMENT OF PROGRAM.—To encourage Department of Defense personnel assigned to duty, or employed, in poor air

[3] Section 1082(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654, 1654A–285) provides:

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 P.L. 106–398, § 1[1082(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–285.)

(b) TIME FOR IMPLEMENTATION.—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 [May 1, 2001].

[CHAPTER 135—REPEALED]

[§§ 2271 to 2279. Repealed. P.L. 103–160, § 821(a)(1), Nov. 30, 1993, 107 Stat. 1704]

CHAPTER 136—PROVISIONS RELATING TO SPECIFIC PROGRAMS

Sec.
2281. Global Positioning System.
2282. B–2 bomber: annual report.

§ 2281. Global Positioning System [1]

(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 continuously 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

[1] Certain additional provisions relating to the Global Positioning System are set out at the end of this chapter.

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 (47 U.S.C. 756). The plan, and any amendment to the plan, shall be published in the Federal Register.

(d) BIENNIAL REPORT.—(1) Not later than 30 days after the end of each even-numbered 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 Global Positioning System. The report shall include a discussion of the following matters:

(A) The operational status of the system.

(B) The capability of the system to satisfy effectively (i) the military requirements for the system that are current as of the date of the report, and (ii) the performance requirements of the Federal Radionavigation Plan.

(C) 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.

(D) The status of cooperative activities undertaken by the United States with the governments of other countries concerning the capability of the system or any augmentation of the system to satisfy civil, commercial, scientific, and military requirements, including a discussion of the status and results of activities undertaken under any regional international agreement.

(E) Any progress made toward establishing GPS as an international standard for consistency of navigational service.

(F) Any progress made toward protecting GPS from disruption and interference.

(G) The effects of use of the system on national security, regional security, and the economic competitiveness of United States industry, including the Global Positioning System equipment and service industry and user industries.

(2) In preparing the parts of each such report required under subparagraphs (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.

(e) 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 P.L. 105–85, § 1074(d)(1), Nov. 18, 1997, 111 Stat. 1908; amended P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 2282. B–2 bomber: annual report

Not later than March 1 of 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 B–2 bomber aircraft. Each such report shall include the following:

(1) Identification of the average full-mission capable rate of B–2 aircraft for the preceding fiscal year and the Secretary's overall assessment of the implications of that full-mission capable rate on mission accomplishment for the B–2 aircraft, together with the Secretary's determination as to whether that rate is adequate for the accomplishment of each of the missions assigned to the B–2 aircraft as of the date of the assessment.

(2) An assessment of the technical capabilities of the B–2 aircraft and whether these capabilities are adequate to accomplish each of the missions assigned to that aircraft as of the date of the assessment.

(3) Identification of all ongoing and planned development of technologies to enhance the capabilities of that aircraft.

(4) Identification and assessment of additional technologies that would make that aircraft more capable or survivable against known and evolving threats.

(5) A fiscally phased program for each technology identified in paragraphs (3) and (4) for the budget year and the future-years defense program, based on the following three funding situations:

(A) The President's current budget.

(B) The President's current budget and the current Department of Defense unfunded priority list.

(C) The maximum executable funding for the B–2 aircraft given the requirement to maintain enough operationally ready aircraft to accomplish missions assigned to the B–2 aircraft.

(Added P.L. 106–398, § 1[131(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–28.)

Certain additional provisions relating to the Global Positioning System are as follows:

Section 152(b) of the National Defense Authorization Act for Fiscal Year 1994 (P.L. 103–160), as amended, provides:

(b) LIMITATION ON PROCUREMENT OF SYSTEMS NOT GPS-EQUIPPED.—After September 30, 2005, 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.

Subsections (a) and (b) of section 1074 of the National Defense Authorization Act for Fiscal Year 1998 (P.L. 105–85; 111 Stat. 1907) provide:

(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).

Subsections (a) through (c) of section 218 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (P.L. 105–261; 112 Stat. 1951) provide:

(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) 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.

CHAPTER 137—PROCUREMENT GENERALLY [1]

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. Repealed.]
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.
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.

[1] In addition to the procurement provisions set forth by this chapter and chapters 140, 141, 144, and other provisions of title 10, numerous provisions of law applicable to procurement by the agencies named in section 2303(a) of this title are found in the Office of Federal Procurement Policy Act, the Federal Property and Administrative Services Act of 1949, the Small Business Act, and other laws. Also, various limitations and requirements relating to defense procurement are included in annual Department of Defense Appropriations Acts and annual National Defense Authorization Acts. Provisions of such laws that are of general and continuing applicability are set forth in the committee print publication of the Committee on Armed Services of the House of Representatives captioned "Laws Relating to Federal Procurement".

2328. Release of technical data under Freedom of Information Act: recovery of costs.
[2329, 2330. Repealed.]
2331. Contracts for professional and technical services.

[§ 2301. Repealed. P.L. 103–355, § 1501(a), Oct. 13, 1994, 108 Stat. 3296]

§ 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 Transportation, 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 title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.);

(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 procurement 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 section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403):

(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 25(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1)).

(7) The term "simplified acquisition threshold" has the meaning provided that term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403), 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 section 4 of such Act.

(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.

(Aug. 10, 1956, ch. 1041, 70A Stat. 127; revised in its entirety P.L. 98–369, § 2722, July 18, 1984, 98 Stat. 1186; amended P.L. 98–525, § 1211, Oct. 19, 1984, 98 Stat. 2589; Oct. 30, 1984, P.L. 98–577, § 504(b)(3), 98 Stat. 3087; P.L. 99–661, § 1343(a)(13), Nov. 14, 1986, 100 Stat. 3993; P.L. 100–26, § 7(k)(2) , April 21, 1987, 101 Stat. 284; P.L. 101–189, § 853(b)(1), Nov. 29, 1989, 103 Stat. 1518; P.L. 102–25, § 701(d)(1), April 6, 1991, 105 Stat. 113; P.L. 102–190, § 805, Dec. 5, 1991, 105 Stat. 1417; P.L. 103–355, § 1502, Oct. 13, 1994, 108 Stat. 3296; P.L. 104–106, § 4321(b)(3), Feb. 10, 1996, 110 Stat. 672; P.L. 104–201, §§ 805(a)(1), 807(a), Sept. 23, 1996, 110 Stat. 2605, 2606; P.L. 105–85, § 803(b), Nov. 18, 1997, 111 Stat. 1832.)

§ 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 4(11) of the Office of Federal Procurement Policy Act.

(b) INAPPLICABLE LAWS.—No law properly listed in the Federal Acquisition Regulation pursuant to section 33 of the Office of Federal Procurement Policy Act shall apply to or with respect to a contract or subcontract that is not greater than the simplified acquisition threshold.

(Added P.L. 103–355, §§ 4002(a), 4102(a), Oct. 13, 1994, 108 Stat. 3338, 3340.)

§ 2302b. Implementation of simplified acquisition procedures

The simplified acquisition procedures contained in the Federal Acquisition Regulation pursuant to section 31 of the Office of Federal Procurement Policy Act shall apply as provided in such section to the agencies named in section 2303(a) of this title.

(Added P.L. 103–355, § 4203(a), Oct. 13, 1994, 108 Stat. 3345.)

§ 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 30 of the Office of Federal Procurement Policy Act (41 U.S.C. 426).

(2) The Secretary of Defense shall act through the Under Secretary of Defense for Acquisition and Technology 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) 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 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)).

(Added P.L. 103–355, § 9002(a), Oct. 13, 1994, 108 Stat. 3402; amended P.L. 105–85, § 850(f)(3)(A), Nov. 18, 1997, 111 Stat. 1850; P.L. 105–129, § 1(a), Dec. 1, 1997, 111 Stat. 2551; P.L. 105–261, § 1069(a)(3), Oct. 17, 1998, 112 Stat. 2135; P.L. 106–65, §§ 911(a)(1), 1066(a)(18), Oct. 5, 1999, 113 Stat. 717, 771.)

§ 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 P.L. 104–201, § 805(a)(2), Sept. 23, 1996, 110 Stat. 2605; amended P.L. 105–85, § 1073(a)(41), Nov. 18, 1997, 111 Stat. 1902; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 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; July 29, 1958, P.L. 85–568, § 301(b), 72 Stat. 432; July 18, 1984, P.L. 98–369, § 2722, 98 Stat. 1187.)

[§ 2303a. Repealed. Pub. L. 98–577, § 302(c), Oct. 30, 1984, 98 Stat. 3077]

§ 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.[2]

(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

[2] Section 8051 of the Department of Defense Appropriations Act, 2001 (P.L. 106–259; 114 Stat. 685), provides:

SEC. 8051. None of the funds appropriated by this Act 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.

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.

(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 $50,000,000), 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 $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)) (without further delegation) 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)(B); and

(C) any required notice has been published with respect to such contract pursuant to section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) 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) the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.), 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) 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.

(5) 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.

(6)(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 and Technology 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)[3](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.

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[3] Section 4202(e) of the Clinger-Cohen Act of 1996 (div. D of P.L. 104–106), as amended, provides:

(e) EFFECTIVE DATE.—The authority to issue solicitations for purchases of commercial items in excess of the simplified acquisition threshold pursuant to the special simplified procedures authorized by section 2304(g)(1) of title 10, United States Code, section 303(g)(1) of the Federal Property and Administrative Services Act of 1949, and section 31(a) of the Office of Federal Procurement Policy Act, as amended by this section, shall expire January 1, 2002. Contracts may be awarded pursuant to solicitations that have been issued before such authority expires, notwithstanding the expiration of such authority.

(4) The head of an agency shall comply with the Federal Acquisition Regulation provisions referred to in section 31(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 427).

(h) For the purposes of the following laws, 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) The Walsh-Healey Act (41 U.S.C. 35 et seq.).

(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).

(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 re-

port on such matters to the Congress or any agency of the Federal Government.

(Aug. 10, 1956 ch. 1041, 70A Stat. 128; revised in its entirety July 18, 1984, P.L. 98–369, §§ 2723(a), 2727, 98 Stat. 1187, 1194; amended Oct. 30, 1984, P.L. 98–577, § 504(b) (1), (2), 98 Stat. 3086; Nov. 8, 1985, P.L. 99–145, § 961(a)(1), § 1303(a)(13), 99 Stat. 703, 739; amended identically P.L. 99–500, 99–591, 99–661, §§ 101(c) [§§ 923 (a), (b), 927(a)], 101(c) [§§ 923 (a), (b), 927(a)], 923 (a), (b), 927(a), Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–152, 1783–155, 3341–152, 3341–155, 3932, 3935; amended P.L. 99–661, § 1343(a)(14), Nov. 14, 1986, 100 Stat. 3993; P.L. 100–26, § 7(d)(3), April 21, 1987, 101 Stat. 281; P.L. 100–456, § 803, Sept. 29, 1988, 102 Stat. 2008; P.L. 101–189, §§ 812, 817, 818, 853(d), Nov. 29, 1989, 103 Stat. 1493, 1501, 1502, 1519; P.L. 101–510, § 806(b), Nov. 5, 1990, 104 Stat. 1592; P.L. 102–25, § 701(d)(2), April 6, 1991, 105 Stat. 114; P.L. 102–484, §§ 801(h)(2), 816, 1052(23), Oct. 23, 1992, 106 Stat. 2445, 2454, 2500; P.L. 103–160, § 904(d), Nov. 30, 1993, 107 Stat. 1728; P.L. 103–355, §§ 1001, 1002, 1003, 1004(b), 1005, 4401(a), 7203(a)(1), Oct. 13, 1994, 108 Stat. 3249, 3253, 3254, 3347, 3379; P.L. 104–106, §§ 4101(a), 4102(a), 4202(a)(1), 4321(b)(4), (5), Feb. 10, 1996, 110 Stat. 642, 643, 653, 672; P.L. 104–320, §§ 7(a)(1), 11(c)(1), Oct. 19, 1996, 110 Stat 3871, 3873; P.L. 105–85, §§ 841(b), 850(f)(3)(B), 1073(a)(42), (43), Nov. 18, 1997, 111 Stat. 1843, 1850, 1902.)

§ 2304a. Task and delivery order contracts: general authority [4]

(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.

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[4] Section 1004(d) of the Federal Acquisition Streamlining Act of 1994 (P.L. 103–355; 108 Stat. 3253) provides:

(d) PROVISIONS NOT AFFECTED.—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) [repealing 10 U.S.C. 2304(j) and 2331(c)], shall be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under—

(1) [obsolete reference omitted]; and

(2) the Brooks Architect-Engineers Act (title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.)).

(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) 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) 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).

(g) 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 P.L. 103–355, § 1004(a)(1), Oct. 13, 1994, 108 Stat. 3249.)

§ 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 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) 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 exception 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 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) 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 P.L. 103–355, § 1004(a)(1), Oct. 13, 1994, 108 Stat. 3249.)

§ 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 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) 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) PROTESTS.—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.

(e) 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.

(f) APPLICABILITY.—This section applies to task and delivery order contracts entered into under sections 2304a and 2304b of this title.

(Added P.L. 103–355, § 1004(a)(1), Oct. 13, 1994, 108 Stat. 3249.)

§ 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 P.L. 103–355, § 1004(a)(1), Oct. 13, 1994, 108 Stat. 3249.)

§ 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 as § 2304a by P.L. 103–160, § 848(a)(1), Nov. 30, 1993, 107 Stat. 1724; redesignated as § 2304e by P.L. 104–106, § 4321(b)(6)(A), Feb. 10, 1996, 110 Stat. 672.)

§ 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 paragraph (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 cost or 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) of this paragraph only if that offeror requested and was refused a preaward debriefing under subparagraph (A) of this paragraph.

(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 com-

petitive 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 re-

quired, 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 procedures 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; revised in its entirety July 18, 1984, P.L. 98–369, § 2723(b), 98 Stat. 1191; amended Oct. 19, 1984, P.L. 98–525, § 1213(a), 98 Stat. 2591; P.L. 99–145, § 1303(a)(14), Nov. 8, 1985, 99 Stat. 739; Nov. 14, 1986, P.L. 99–661, § 313(b), 100 Stat. 3932; amended identically P.L. 99–500, 99–591, 99–661, §§ 101(c) [§ 924 (a), (b)], 101(c) [§ 924 (a), (b)], 924 (a), (b), Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–153, 3341–153, 3853, amended P.L. 100–456, § 806, Sept. 29, 1988, 102 Stat. 2010; P.L. 101–189, § 853(f), Nov. 29, 1989, 103 Stat. 1519; P.L. 101–510, § 802, Nov. 5, 1990, 104 Stat. 1588; P.L. 103–160, § 1182(a)(5), Nov. 30, 1993, 107 Stat. 1771; P.L. 103–355, §§ 1011, 1012, 1013, 1014, 1015, 1016, 4401(b), Oct. 13, 1994, 108 Stat. 3254, 3255, 3256, 3257, 3347; P.L. 104–106, §§ 4103(a), 4104(a), 4202(a)(2), 5601(a), Feb. 10, 1996, 110 Stat. 643, 644, 653, 699; P.L. 104–201, §§ 821(a), 1074(a)(11), Sept. 23, 1996, 110 Stat. 2609, 2659; P.L. 106–65, § 821, Oct. 5, 1999, 113 Stat. 714.)

§ 2305a. Design-build selection procedures

(a) AUTHORIZATION.—Unless the traditional acquisition approach of design-bid-build established under the Brooks Architect-Engineers Act (40 U.S.C. 541 et seq.) 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 the Brooks Architect-Engineers Act (40 U.S.C. 541 et seq.).

(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 sub-

section (c) shall state the maximum number of offerors that are to be selected to submit competitive proposals pursuant to subsection (c)(4). 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.

(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.

(Added P.L. 104–106, § 4105(a)(1), Feb. 10, 1996, 110 Stat. 645 [former 2305a transferred to § 2438]; amended P.L. 105–85, § 1073(a)(44), Nov. 18, 1997, 111 Stat. 1902.)

§ 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) Repealed. P.L. 103–355, § 1021, 108 Stat. 3257]

(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 sub-

section 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) 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—

(1) a cost-plus-a-fixed-fee subcontract; or

(2) a fixed-price subcontract or purchase order involving more than the greater of (A) the simplified acquisition threshold, or (B) 5 percent of the estimated cost of the prime 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; Sept. 10, 1962, P.L. 87–653, § 1(d), (e), 76 Stat. 528; July 5, 1968, P.L. 90–378, § 1, 82 Stat. 289; Sept. 25, 1968, P.L. 90–512, 82 Stat. 863; Dec. 12, 1980, P.L. 96–513, § 511(77), 94 Stat. 2926; Dec. 1, 1981, P.L. 97–86, §§ 907(b), 909(b), 95 Stat. 1117, 1118; July 18, 1984, P.L. 98–369, § 2724, 98 Stat. 1192; Nov. 8, 1985, P.L. 99–145, § 1303(a)(15), 99 Stat. 739; amended identically P.L. 99–500, 99–591, 99–661, §§ 101(c) [§ 952 (b), (c)], 101(c) [§ 952 (b), (c)], 952 (b), (c), Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–169, 3341–169, 3949; P.L. 101–189, § 805(a), Nov. 29, 1989, 103 Stat. 1488; P.L. 101–510, § 808, Nov. 5, 1990, 104 Stat. 1593; P.L. 102–25, § 701(d)(3), April 6, 1991, 105 Stat. 114; P.L. 103–355, §§ 1021, 1022(b), 4102(b), 4401(c), 8105(a), Oct. 13, 1994, 108 Stat. 3257, 3260, 3340, 3348, 3392; P.L. 105–85, § 1073(a)(45), Nov. 18, 1997, 111 Stat. 1902; P.L. 106–398, § 1[802(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–205.)

§ 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; or

(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.

(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.

(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.

(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 con-

sistent 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 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).

(Added by identical amendments P.L. 99–500, 99–591, 99–661, §§ 101(c) [§ 952(a)], 101(c) [§ 952(a)], 952(a), Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–166, 3341–166, 3945; amended P.L. 100–180, § 804, Dec. 4, 1987, 101 Stat. 1125; P.L. 101–510, § 803, Nov. 5, 1990, 104 Stat. 1589–1591; P.L. 102–25, § 701(b), April 6, 1991, 105 Stat. 113; P.L. 102–190, §§ 804(a), (b), (c)(1), 1061(a)(9), Dec. 5, 1991, 105 Stat. 1415–1416, 1472; P.L. 103–355, §§ 1201–1209, Oct. 13, 1994, 108 Stat. 3273–3277; P.L. 104–106, §§ 4201(a), 4321(b)(7), Feb. 10, 1996, 110 Stat. 649, 672; P.L. 104–201, § 1174(a)(12), Sept. 23, 1996, 110 Stat. 2659; P.L. 105–85, § 1073(a)(46), Nov. 18, 1997, 111 Stat. 1902; P.L. 105–261, §§ 805(a), 808(a), Oct. 17, 1998, 112 Stat. 2083, 2085.)

§ 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 substantial 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 contract will promote the national security of the United States.

(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 Transportation 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.—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 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, and such contract may not then be awarded until the end of a period of 30 days beginning on the date of such notification.

(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) A multiyear contract may not be entered into for any fiscal year under this section for a defense acquisition program that has been specifically authorized by law to be carried out using multiyear contract authority unless each of the following conditions is satisfied:

(A) The Secretary of Defense certifies to Congress that the current future-years defense program fully funds the support costs associated with the multiyear program.

(B) The proposed multiyear contract provides for production at not less than minimum economic rates given the existing tooling and facilities.

(2) 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 substantial 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.

(3) 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 for any fiscal year under this section unless the contract is specifically authorized by law in an Act other than an appropriations Act.

(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)[5] VARIOUS ADDITIONAL REQUIREMENTS WITH RESPECT TO MULTIYEAR DEFENSE CONTRACTS.—(1)(A) The head of an agency

[5] Section 8008 of the Department of Defense Appropriations Act, 2001 (P.L. 106–259; 114 Stat. 675), provides:

SEC. 8008. None of the funds provided in this Act shall be available to initiate: (1) a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any 1 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 1 year, unless the congressional defense committees 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.

Continued

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.

Funds appropriated in title III of this Act may be used for multiyear procurement contracts as follows:

Javelin missile; M2A3 Bradley fighting vehicle; DDG–51 destroyer; and UH–60/CH–60 aircraft.

(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, 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.

(10) 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.

(Added P.L. 103–355, § 1022(a)(1), Oct. 13, 1994, 108 Stat. 3257 [formerly § 2306(h)]; amended P.L. 104–106, §§ 1502(a)(10), 5601(b), Feb. 10, 1996, 110 Stat. 503, 699; P.L. 105–85, §§ 806(a)–(c), 1073(a)(47), (48)(A), Nov. 18, 1997, 111 Stat. 1834, 1835, 1903; P.L. 106–65, §§ 809, 1067(1), Oct. 5, 1999, 113 Stat. 705, 774; P.L. 106–398, § 1[802(c), 806], Oct. 30, 2000, 114 Stat. 1654, 1654A–205, 1654A–207.)

§ 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; inplane refueling; bus transportation; refuse collection and disposal).

(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 committees of Congress named in paragraph (5) 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 committees of Congress named in paragraph (5).

(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 committees of Congress named in paragraph (5), 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) 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.

(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.

(Added P.L. 106–398, § 1[802(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–203.)

§ 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; Aug. 28, 1958, P.L. 85–800, § 9, 72 Stat. 967; Nov. 16, 1973, P.L. 93–155, § 807(c), 87 Stat. 616; July 19, 1988, P.L. 100–370, § 1(f)(1), 102 Stat. 846; P.L. 101–510, §§ 836(a), (b), 1322(a)(4), Nov. 5, 1990, 104 Stat. 1615–1616, 1671; P.L. 102–25, § 701(d)(4), (j)(2)(A), April 6, 1991, 105 Stat. 114, 116; Oct. 23, 1992, P.L. 102–484, § 1052(24), 106 Stat. 2500; Oct. 13, 1994, P.L. 103–355, § 2001(a)–(g), 108 Stat. 3301, 3302; P.L. 105–85, § 802, Nov. 18, 1997, 111 Stat. 1831; P.L. 106–391, § 306, Oct. 30, 2000, 114 Stat. 1592.)

[§ 2308. Repealed. P.L. 103–355, § 1503(b)(1), Oct. 13, 1994, 108 Stat. 3297]

§ 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; Sept. 13, 1982, P.L. 97–258, § 2(b)(1)(B), 96 Stat. 1052.)

§ 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; Aug. 28, 1958, P.L. 85–800, § 10, 72 Stat. 967; Sept. 10, 1962, P.L. 87–653, § 1(f), 76 Stat. 529; Sept. 27, 1966, P.L. 89–607, § 1(1), 80 Stat. 850; July 5, 1968, P.L. 90–378, § 2, 82 Stat. 290; July 18, 1984, P.L. 98–369, § 2725, 98 Stat. 1194; Nov. 8, 1985, P.L. 99–145, § 1303(a)(16), 99 Stat. 739; revised in its entirety P.L. 103–355, § 1504, Oct. 13, 1994, 108 Stat. 3297.)

§ 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 and Technology 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 and Technology 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; Aug. 28, 1958, P.L. 85–800, § 11, 72 Stat. 967; Sept. 10, 1962, P.L. 87–653, § 1(g), 76 Stat. 529; July 5, 1968, P.L. 90–378, § 3, 82 Stat. 290; Dec. 1, 1981, P.L. 97–86, §§ 907(c), 909(f), 95 Stat. 1117, 1120; July 18, 1984, P.L. 98–369, § 2726, 98 Stat. 1194; Oct. 19, 1984, P.L. 98–525, § 1214, 98 Stat. 2592; Oct. 30, 1984, P.L. 98–577, § 505, 98 Stat. 3087; revised in its entirety P.L. 103–355, § 1503(a)(1), Oct. 13, 1994, 108 Stat. 3296.)

§ 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; Oct. 19, 1996, P.L. 104–316, § 202(c), 110 Stat. 3842.)

§ 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.

(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 in-

terest. 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; Sept. 27, 1966, P.L. 89–607, § 1(2), 80 Stat. 850; July 18, 1984, P.L. 98–369, § 2727, 98 Stat. 1195; Nov. 8, 1985, P.L. 99–145, § 935, 99 Stat. 700; P.L. 100–26, § 7(g)(1), April 21, 1987, 101 Stat. 282; P.L. 101–510, § 1301(9), Nov. 5, 1990, 104 Stat. 1668; revised in its entirety P.L. 103–355, §§ 2201(a)(1), 4102(c), Oct. 13, 1994, 108 Stat. 3316, 3340; P.L. 104–106, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; P.L. 104–201, § 808(a), Sept. 23, 1996, 110 Stat. 2607; P.L. 106–65, §§ 1031(a)(2), 1067(1), Oct. 5, 1999, 113 Stat. 751, 774.)

§ 2314. Laws inapplicable to agencies named in section 2303 of this title

Sections 3709 and 3735 of the Revised Statutes (41 U.S.C. 5 and 13) 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; Dec. 12, 1980, P.L. 96–513, § 511(78), 94 Stat. 2927; Nov. 30, 1993, P.L. 103–160, § 822(b)(2), 107 Stat. 1706.)

§ 2315. Law inapplicable to the procurement of automatic data processing equipment and services for certain defense purposes

(a) For the purposes of division E of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401 et seq.), the term "national security systems" means those telecommunications and information systems operated by the Department of Defense, the functions, operation or use of which—

(1) involves intelligence activities;

(2) involves cryptologic activities related to national security;

(3) involves the command and control of military forces;

(4) involves equipment that is an integral part of a weapon or weapons system; or

(5) subject to subsection (b), is critical to the direct fulfillment of military or intelligence missions.

(b) Subsection (a)(5) does not include procurement of automatic data processing equipment or services to be used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications).

(Added P.L. 97–86, § 908(a)(1), Dec. 1, 1981, 95 Stat. 1117; amended P.L. 97–295, § 1(25), Oct. 12, 1982, 96 Stat. 1291; P.L. 104–106, § 5601(c), Feb. 10, 1996, 110 Stat. 699 [P.L. 104–201, § 1074(b)(4), Sept. 23, 1996, 110 Stat. 2660]; P.L. 105–85, § 1073(a)(49), Nov. 18, 1997, 111 Stat. 1903.)

§ 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 P.L. 97–295, § 1(26)(A), Oct. 12, 1982, 96 Stat. 1291.)

[§ 2317. Repealed. P.L. 103–160, § 821(a)(2), Nov. 30, 1993, 107 Stat. 1704]

§ 2318. Advocates for competition

(a)(1) In addition to the advocates for competition established or designated pursuant to section 20(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 418(a)), 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 sections 20(b) and 20(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 418(b), (c)).

(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 P.L. 98–525, § 1216(a), Oct. 19, 1984, 98 Stat. 2593; amended P.L. 100–26, § 7(d)(4), April 21, 1987, 101 Stat. 281; P.L. 102–25, § 701(f)(1), April 6, 1991, 105 Stat. 115; P.L. 103–355, § 1031, Oct. 13, 1994, 108 Stat. 3260.)

§ 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 addi-

tional 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 offer (A) is not on a qualified bidders list, qualified manufacturers list, or qualified products list, or (B) has not been identified as meeting a qualification requirement established after October 19, 1984, if the potential offeror can demonstrate to the satisfaction of the contracting officer 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 qualifica-

tion, 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 qualifed 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).

(Added P.L. 98–525, § 1216(a), Oct. 19, 1984, 98 Stat. 2593; amended P.L. 100–26, § 7(d)(5), (i)(4), (k)(3), April 21, 1987, 101 Stat. 281, 282, 284.)

§ 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; or

(II) 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) 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 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 (C); or

(II) 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 definitions under this paragraph.

(b) Regulations prescribed under subsection (a) shall require that, wherever 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 deliver 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) 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;

(8) 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; and

(9) 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.

(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; or

(2) prescribing reasonable and flexible guidelines, including negotiation objectives, for the conduct of negotiations re-

garding 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.

(Added P.L. 98–525, § 1216(a), Oct. 19, 1984, 98 Stat. 2595; amended P.L. 98–577, § 301(b), Oct. 30, 1984, 98 Stat. 3076; P.L. 99–145, § 961(d)(1), Nov. 8, 1985, 99 Stat. 703; amended identically P.L. 99–500, 99–591, 99–661, §§ 101(c) [§ 953(a)], 101(c) [§ 953(a)], 953(a), Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–169, 3341–169, 3949; amended P.L. 100–26, § 7(a)(4), April 21, 1987, 101 Stat. 275; P.L. 100–180, § 808, Dec. 4, 1987, 101 Stat. 1128; P.L. 101–189, § 853(b)(2), Nov. 29, 1989, 103 Stat. 1518; P.L. 103–355, § 8106(a), Oct. 13, 1994, 108 Stat. 3393.)

§ 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 an asserted use or release restriction may not be made under paragraph (1) after the end of the three-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; or

(iii) have been otherwise made available without restriction.

(B) The three-year period referred to in subparagraph (A) is the three-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 paragaph (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 response 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 FOR COMMERCIAL ITEMS CONTRACTS.—In the case of a challenge to a use or release restriction that is asserted with re-

spect 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.

(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 the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.)

(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 P.L. 98–525, § 1216(a), Oct. 19, 1984, 98 Stat. 2597, and amended identically P.L. 99–500, 99–591, 99–661, §§ 101(c) [§ 953(b)], 101(c) [§ 953(b)], 953(b), Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–171, 3341–171, 3951; amended P.L. 100–26, § 7(a)(5), April 21, 1987, 101 Stat. 276; P.L. 100–180, § 1231(6), Dec. 4, 1987, 101 Stat. 1160; P.L. 103–35, § 201(g)(4), May 31, 1993, 107 Stat. 100; P.L. 103–355, § 8106(b), Oct. 13, 1994, 108 Stat. 3393.)

[§ 2322. Repealed. P.L. 102–484, § 1052(24), Oct. 23 1992, 106 Stat. 2500]

§ 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; and

(C) minority institutions (as defined in section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d–5(3))), 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))).

(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 and minority institutions in order to increase the participation of such colleges and universities 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 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 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 percent 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) 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

(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.

(3) The report required under paragraph (1) shall also include the following:

(A) The aggregate differential between the fair market price of all contracts awarded pursuant to subsection (e)(3) and the estimated fair market price of all such contracts had such contracts been entered into using full and open competitive procedures.

(B) An analysis of the impact that subsection (a) shall have on the ability of small business concerns not owned and controlled by socially and economically disadvantaged individuals to compete for contracts with the agency.

(C) A description of the percentage of contracts (actions), the total dollar amount (size of action), and the number of different entities relative to the attainment of the goal of subsection (a), separately for Black Americans, Native Americans, Hispanic Americans, Asian Pacific Americans, and other minorities.

(D) A detailed description of the infrastructure assistance provided under subsection (c) during the preceding fiscal year and of the plans for providing such assistance during the fiscal year in which the report is submitted.

(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 Transportation, 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 2003.

(2) This section applies in the Coast Guard and the National Aeronautics and Space Administration in each of fiscal years 1995 through 2003.

(Added P.L. 102–484, §§ 801(a)–(f), 802, Oct. 23, 1992, 106 Stat. 2442, 2446 [previous § 2323 repealed P.L. 101–510, § 804(a), Nov. 5, 1990, 104 Stat. 1591]; P.L. 103–160, § 811(a)–(c), (e), Nov. 30, 1993, 107 Stat. 1702; revised in its entirety P.L. 103–355, § 7105, Oct. 13, 1994, 108 Stat. 3369; amended P.L. 104–106, § 4321(b)(8), Feb. 10, 1996, 110 Stat. 672; P.L. 105–135, § 604(a), Dec. 2, 1997, 111 Stat. 2632; P.L. 105–261, § 801, Oct. 17, 1998, 112 Stat. 2080; P.L. 106–65, § 808, Oct. 5, 1999, 113 Stat. 705.)

§ 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 P.L. 102–484, § 801(g), Oct. 23, 1992, 106 Stat. 2445; amended P.L. 104–201, § 1074(a)(13), Sept. 23, 1996, 110 Stat. 2659.)

§ 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 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605); and

(2) is appealable in the manner provided in section 7 of such Act (41 U.S.C. 606).

(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 had 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.[6]

(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) Costs of compensation of senior executives of contractors 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 39 of the Office of Federal Procurement Policy Act (41 U.S.C. 435).

[6] Section 311(a)(2) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (P.L. 101–189; 103 Stat. 1411) provides that subparagraph (N), as added by section 311(a)(1) of that Act, shall not apply with respect to the termination of the employment of a foreign national employed under any covered contract (as defined in subsection (1) of section 2324) 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 Nov. 29, 1989.

(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[7] (41 U.S.C. 10b–1) 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 na-

[7] Section 4 of the Buy American Act, referred to in paragraph (2)(C), terminated as of April 30, 1996, pursuant to section 7004 of P.L. 100–418 (41 U.S.C. 10a note).

tional 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 agency 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 allow-ability 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 or a State 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 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) 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.

(6) The term "fiscal year" means a fiscal year established by a contractor for accounting purposes.

(Added P.L. 99–145, § 911(a), Nov. 8, 1985, 99 Stat. 682; amended P.L. 99–190, § 101(b) [§ 8112(a)], Dec. 19, 1985, 99 Stat. 1223; P.L. 100–26, § 7(k)(3), April 21, 1987, 101 Stat. 284; P.L. 100–180, § 805(a), Dec. 4, 1987, 101 Stat. 1126; P.L. 100–370, § 1(f)(2), (3), July 19, 1988, 102 Stat. 846; P.L. 100–456, §§ 322(a), 826(a), 832, Sept. 29, 1988, 102 Stat. (1952), 2022, 2033; P.L. 100–700, § 8(b), Nov. 19, 1988, 102 Stat. 4636; P.L. 101–189, §§ 311(a)(1), 853(a)(1), (b)(3), Nov. 29, 1989, 103 Stat. 1411, 1518; P.L. 101–510, § 1301(10), Nov. 5, 1990, 104 Stat. 1668; P.L. 102–190, § 346(a), Dec. 5, 1991, 105 Stat. 1346; P.L. 102–484, §§ 818(a), 1052(26), 1352(b), Oct. 23, 1992, 106 Stat. 2457, 2500, 2559; P.L. 103–355, § 2101(a)–(d), Oct. 13, 1994, 108 Stat. 3306–3308; P.L. 104–106, § 4321(b)(9), Feb. 10, 1996, 110 Stat. 672; P.L. 105–85, § 808(a), Nov. 18, 1997, 111 Stat. 1836; P.L. 105–261, § 804(a), Oct. 17, 1998, 112 Stat. 2083.)

§ 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) to an official of the Department of Defense below the level of an Assistant Secretary of Defense.

(b) REPORT.—Not later than March 1 in each of 1998, 1999, 2000, 2001, and 2002, the Secretary of Defense shall submit to Congress a report that contains, with respect to business combinations occurring on or after August 15, 1994, the following:

(1) For each defense contractor to which the Secretary has paid, under section 2324 of this title, restructuring costs associated with a business combination, a summary of the following:

(A) An estimate of the amount of savings for the Department of Defense associated with the restructuring that has been realized as of the end of the preceding calendar year.

(B) An estimate of the amount of savings for the Department of Defense associated with the restructuring that is expected to be achieved on defense contracts.

(2) An identification of any business combination for which the Secretary has paid restructuring costs under section 2324 of this title during the preceding calendar year and, for each such business combination—

(A) the supporting rationale for allowing such costs;

(B) factual information associated with the determination made under subsection (a) with respect to such costs; and

(C) a discussion of whether the business combination would have proceeded without the payment of restructuring costs by the Secretary.

(3) For business combinations of major defense contractors that took place during the year preceding the year of the report—

(A) an assessment of any potentially adverse effects that the business combinations could have on competition for Department of Defense contracts (including potential horizontal effects, vertical effects, and organizational conflicts of interest), the national technology and industrial base, or innovation in the defense industry; and

(B) the actions taken to mitigate the potentially adverse effects.

(c) DEFINITION.—In this section, the term "business combination" includes a merger or acquisition.

(Added P.L. 105–85, § 804(a)(1), Nov. 18, 1997, 111 Stat. 1832; amended P.L. 106–65, § 1066(a)(19), Oct. 5, 1999, 113 Stat. 771.)

§ 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 OBLIGATIONS 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 respet 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)[8] The term "qualifying proposal" means a proposal that contains sufficient information to enable the Department of

[8] Subsections (b) and (e) of section 908 of the Defense Acquisition Improvement Act of 1986 (as contained in section 101(c) [title X] of P.L. 99–500 and identically enacted in section 101(c) [title X] of P.L. 99–591 and title IX of division A of P.L. 99–661) provide:

(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.

Continued

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 by identical amendments P.L. 99–500, 99–591, 99–661, §§ 101(c) [§ 908(d)], 101(c) [§ 908(d)], 908(d), Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–140, 3341–140, 3920; amended P.L. 101–189, § 1622(c)(6), Nov. 29, 1989, 103 Stat. 1604; P.L. 102–25, § 701(d)(5), April 6, 1991, 105 Stat. 114; P.L. 103–355, § 1505, Oct. 13, 1994, 108 Stat. 3298; P.L. 105–85, § 803(a), Nov. 18, 1997, 111 Stat. 1831.)

§ 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)) 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)) 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 after the date on which such head of an agency submits to Congress a report on the contract.

(B) A report under subparagraph (A) 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,

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(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)).

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.

(C) 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 submisson of the previous report.

(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 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 by identical amendments P.L. 99–500, 99–591, 99–661, §§ 101(c) [§ 951(a)], 101(c) [§ 951(a)], 951(a), Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–164, 3341–164, 3944; amended P.L. 100–180, § 1231(8), Dec. 4, 1987, 101 Stat. 1160; P.L. 100–224, § 5(b)(2), Dec. 30, 1987, 101 Stat. 1538; P.L. 105–85, § 843, Nov. 18, 1997, 111 Stat. 1844.)

§ 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 by identical amendments P.L. 99–500, 99–591, 99–661, §§ 101(c) [§ 954(a)], 101(c) [§ 954(a)], 954(a), Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–172, 3341–172, 3952; amended P.L. 100–26, § 7(a)(7), April 21, 1987, 101 Stat. 278.)

[§ 2329. Repealed. P.L. 103–355, § 1506(a), Oct. 13, 1994, 108 Stat. 3298]

[§ 2330. Repealed. Pub. L. 102–484, § 4271(a)(1), Oct. 23, 1992, 106 Stat. 2695]

§ 2331. 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 P.L. 101–510, § 834(a)(1), Nov. 5, 1990, 104 Stat. 1613; amended P.L. 102–25, § 701(a), April 6, 1991, 105 Stat. 113; P.L. 103–355, § 1004(c), Oct. 13, 1994, 108 Stat. 3253.)

CHAPTER 138—COOPERATIVE AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES

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SUBCHAPTER I—ACQUISITION AND CROSS-SERVICING AGREEMENTS

Sec.
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§ 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 of which the United States is a member 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 P.L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1016, § 2321; renumbered § 2341 and amended P.L. 99–145, § 1304(a) (1), (4), Nov. 8, 1985, 99 Stat. 741; revised in its entirety P.L. 99–661, § 1104(a), Nov. 14, 1986, 100 Stat. 3963.); amended P.L. 102–484, § 1312(a), Oct. 23, 1992, 106 Stat. 2547; P.L. 103–337, § 1317(a), Oct. 5, 1994, 108 Stat. 2899.)

§ 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 of which the United States is a member.

(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 Organization, 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 P.L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1016, § 2322; renumbered § 2342 and amended P.L. 99–145, § 1304(a) (1), (4), Nov. 8, 1985, 99 Stat. 741; revised in its entirety P.L. 99–661, § 1104(a), Nov. 14, 1986, 100 Stat. 3963; amended P.L. 100–180, § 1231(g), Dec. 4, 1987, 101 Stat. 1160; P.L. 101–189, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535; P.L. 101–510, § 1451(a), Nov. 5, 1990, 104 Stat. 1692; P.L. 103–337, § 1317(b), Oct. 5, 1994, 108 Stat. 2900; P.L. 104–106, § 1502(a)(16), Feb. 10, 1996, 110 Stat. 504; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 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 3741 of the Revised Statutes (41 U.S.C. 22) 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 P.L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1017, § 2323; renumbered § 2343 and amended P.L. 99–145, § 961(b), § 1304(a)(5), Nov. 8, 1985, 99 Stat. 703, 741; amended P.L. 100–26, § 7(g)(2), April 21, 1987, 101 Stat. 282; P.L. 100–456, § 1233(d), Sept. 29, 1988, 102 Stat. 2057; P.L. 101–189, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535; P.L. 102–190, § 1061(a)(12), Dec. 5, 1991, 105 Stat. 1473; P.L. 103–337, § 1317(c)(1), (2)(A), Oct. 5, 1994, 108 Stat. 2900.)

§ 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 of which the United States is a member 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 P.L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1017, § 2324; amended P.L. 97–22, § 11(a)(8), July 10, 1981, 95 Stat. 138; renumbered § 2344 P.L. 99–145, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741; amended P.L. 99–661, § 1104(b), Nov. 14, 1986, 100 Stat. 3964; P.L. 101–189, §§ 931(e)(1), 938(a), (b), Nov. 29, 1989, 103 Stat. 1535, 1539; P.L. 102–25, § 701(f)(2), April 6, 1991, 105 Stat. 115; P.L. 103–337, § 1317(d), Oct. 5, 1994, 108 Stat. 2900.)

§ 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 P.L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2325; renumbered § 2345, P.L. 99–145, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741; amended P.L. 99–661, § 1104(c), Nov. 14, 1986, 100 Stat. 3965; P.L. 101–189, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535; P.L. 103–337, § 1317(e), Oct. 5, 1994, 108 Stat. 2900.)

§ 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 P.L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2326; renumbered § 2346, P.L. 99–145, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741; amended P.L. 101–189, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535; P.L. 103–337, § 1317(f), Oct. 5, 1994, 108 Stat. 2900.)

§ 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 (other than petroleum, oils, and lubricants).

(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 affecting 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 (other than petroleum, oils, and lubricants). 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.

(Added P.L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2327; renumbered § 2347, P.L. 99–145, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741; amended P.L. 99–661, § 1104(d), Nov. 14, 1986, 100 Stat. 3965; P.L. 100–456, § 1001, Sept. 29, 1988, 102 Stat. 2037; P.L. 101–189, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535; P.L. 102–484, § 1321(b), Oct. 23, 1992, 106 Stat. 2547; P.L. 103–337, § 1317(g), Oct. 5, 1994, 108 Stat. 2901.)

§ 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 P.L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2328; amended P.L. 97–22, § 11(a)(8), July 10, 1981, 95 Stat. 138; renumbered § 2348, P.L. 99–145, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741; amended P.L. 99–661, § 1104(e), Nov. 14, 1986, 100 Stat. 3965; P.L. 101–189, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535.)

§ 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)(3) of this title.

(Added P.L. 103–160, § 1431(a)(1), Nov. 30, 1993, 107 Stat. 1832.)

§ 2349a. Annual report on non-NATO agreements

(a) REPORT.—The Secretary of Defense shall submit to Congress, not later than January 15 of each of 1996, 1997, 1998, 1999, and 2000, a report covering non-NATO cross-servicing and acquisition actions in effect during the preceding fiscal year.

(b) MATTERS TO BE INCLUDED.—Each such report shall set forth in detail the following with respect to the preceding fiscal year:

(1) The total dollar amounts involved.

(2) A description of any services and equipment provided or received through those actions.

(3) A description of any equipment provided through those actions that is not returned.

(4) The volume of credits and liabilities accrued and liquidated.

(c) NON-NATO AGREEMENTS.—For purposes of this section, a non-NATO cross-servicing and acquisition agreement is a cross-servicing and acquisition agreement under this subchapter that involves countries or organizations other than North Atlantic Treaty Organization countries or subsidiary bodies.

(Added P.L. 103–337, § 1317(i)(1), Oct. 5, 1994, 108 Stat. 2902.)

§ 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 P.L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1019, § 2331; renumbered § 2350, P.L. 99–145, § 1304(a)(3), Nov. 8, 1985, 99 Stat. 741; amended P.L. 99–661, § 1104(f), Nov. 14, 1986, 100 Stat. 3965; P.L. 100–26, § 7(k)(2), April 21, 1987, 101 Stat. 284; P.L. 101–189, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535; P.L. 103–337, § 1317(h), Oct. 5, 1994, 108 Stat. 2901; P.L. 105–85, § 1222, Nov. 18, 1997, 111 Stat. 1937.)

SUBCHAPTER II—OTHER COOPERATIVE AGREEMENTS [1]

Sec.
2350a. Cooperative research and development projects: allied countries.
2350b. Cooperative projects under Arms Export Control Act: acquisition of defense equipment.
2350c. Cooperative military airlift agreements: allied countries.
2350d. Cooperative logistic support agreements: NATO countries.
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§ 2350a. Cooperative research and development projects: allied countries

(a) AUTHORITY TO ENGAGE IN COOPERATIVE R&D PROJECTS.—The Secretary of Defense may enter into a memorandum of understanding (or other formal agreement) with one or more major allies

[1] Section 1082 of the National Defense Authorization Act for Fiscal Year 1997 (P.L. 104–201; 110 Stat. 2672) provides:

SEC. 1082. AGREEMENTS FOR EXCHANGE OF DEFENSE PERSONNEL BETWEEN THE UNITED STATES AND FOREIGN COUNTRIES.

(a) AUTHORITY TO ENTER INTO INTERNATIONAL EXCHANGE AGREEMENTS.—(1) The Secretary of Defense may enter into international defense personnel exchange agreements.

(2) For purposes of this section, an international defense personnel exchange agreement is an agreement with the government of an ally of the United States or another friendly foreign country for the exchange of—

(A) military and civilian personnel of the Department of Defense; and

(B) military and civilian personnel of the defense ministry of that foreign government.

(b) ASSIGNMENT OF PERSONNEL.—(1) Pursuant to an international defense personnel exchange agreement, personnel of the defense ministry of a foreign government may be assigned to positions in the Department of Defense and personnel of the Department of Defense may be assigned to positions in the defense ministry of such foreign government. Positions to which exchanged personnel are assigned may include positions of instructors.

(2) An agreement for the exchange of personnel engaged in research and development activities may provide for assignment of Department of Defense personnel to positions in private industry that support the defense ministry of the host foreign government.

(3) An individual may not be assigned to a position pursuant to an international defense personnel exchange agreement unless the assignment is acceptable to both governments.

(c) RECIPROCITY OF PERSONNEL QUALIFICATIONS REQUIRED.—Each government shall be required under an international defense personnel exchange agreement to provide personnel with qualifications, training, and skills that are essentially equal to those of the personnel provided by the other government.

(d) PAYMENT OF PERSONNEL COSTS.—(1) Each government shall pay the salary, per diem, cost of living, travel costs, cost of language or other training, and other costs for its own personnel in accordance with the applicable laws and regulations of such government.

(2) Paragraph (1) does not apply to the following costs:

(A) The cost of temporary duty directed by the host government.

(B) The cost of training programs conducted to familiarize, orient, or certify exchanged personnel regarding unique aspects of the assignments of the exchanged personnel.

(C) Costs incident to the use of the facilities of the host government in the performance of assigned duties.

(e) PROHIBITED CONDITIONS.—No personnel exchanged pursuant to an agreement under this section may take or be required to take an oath of allegiance to the host country or to hold an official capacity in the government of such country.

(f) RELATIONSHIP TO OTHER AUTHORITY.—The requirements in subsections (c) and (d) shall apply in the exercise of any authority of the Secretaries of the military departments to enter into an agreement with the government of a foreign country to provide for the exchange of members of the armed forces and military personnel of the foreign country. The Secretary of Defense may prescribe regulations for the application of such subsections in the exercise of such authority.

of the United States or NATO organizations for the purpose of conducting cooperative research and development projects on defense equipment and munitions.

(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 (NATO) or the common conventional defense capabilities of the United States and its major non-NATO allies.

(2) The authority of the Secretary to make a determination under paragraph (1) may only be delegated to the Deputy Secretary of Defense or the Under Secretary of Defense for Acquisition and Technology.

(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 the major allies of the United States 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 major ally of the United States may not use any military or economic assistance grant, loan, or other funds provided by the United States for the purpose of making that ally's contribution to a cooperative research and development program entered into with the United States under this section.

(e) COOPERATIVE OPPORTUNITIES DOCUMENT.—(1)(A) 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, the Under Secretary of Defense for Acquisition and Technology shall prepare an arms cooperation opportunities document with respect to that project for review by the Defense Acquisition Board at formal meetings of the Board.

(B) 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.

(2) An arms cooperation opportunities document referred to in paragraph (1) shall include the following:

(A) A statement indicating whether or not a project similar to the one under consideration by the Department of Defense is in development or production by one or more of the major allies of the United States.

(B) If a project similar to the one under consideration by the Department of Defense is in development or production by one or more major allies of the United States or NATO organizations, an assessment by the Under Secretary of Defense for Acquisition and Technology as to whether that project could satisfy, or could be modified in scope so as to satisfy, the military requirements of the project of the United States under consideration by the Department of Defense.

(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 major allies of the United States.

(D) The recommendation of the Under Secretary as to whether the Department of Defense should explore the feasibility and desirability of a cooperative development program with one or more major allies of the United States.

(f) REPORTS TO CONGRESS.—(1) Not later than March 1 of each year, the Under Secretary of Defense for Acquisition and Technology shall submit to the Speaker of the House of Representatives and the Committees on Armed Services and Appropriations of the Senate a report on cooperative research and development projects under this section. Each such report shall include—

(A) a description of the status, funding, and schedule of existing projects carried out under this section for which memoranda of understanding (or other formal agreements) have been entered into; and

(B) a description of the purpose, funding, and schedule of any new projects proposed to be carried out under this section (including those projects for which memoranda of understanding (or other formal agreements) have not yet been entered into) for which funds have been included in the budget submitted to Congress pursuant to section 1105 of title 31 for the fiscal year following the fiscal year in which the report is submitted.

(2) 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.

(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 major allies of the United States and other friendly foreign countries 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.

(3) 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.

(4) 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 major allies of the United States and other friendly foreign countries 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.

(h) SECRETARY TO ENCOURAGE SIMILAR PROGRAMS.—The Secretary of Defense shall encourage major allies of the United States 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 major allies of the United States or NATO organizations 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 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.

(3) 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.

(4) 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 P.L. 101–189, § 931(a)(2), Nov. 29, 1989, 103 Stat. 1531; amended P.L. 101–510, § 1331(4), Nov. 5, 1990, 104 Stat. 1673; P.L. 102–190, § 1053, Dec. 5, 1991, 105 Stat. 1471; P.L. 102–484, § 843(b), Oct. 23, 1992, 106 Stat. 2469; P.L. 103–35, § 202(a)(7), May 31, 1993, 107 Stat. 101; P.L. 103–160, § 904(d), Nov. 30, 1993, 107 Stat. 1728; P.L. 103–337, § 1301, Oct. 5, 1994, 108 Stat. 2888; P.L. 104–106, § 1502(a)(17), Feb. 10, 1996, 110 Stat. 504; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 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 Sec-

retary 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—

(1) the Secretary of Defense 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 901(b) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b)).

(Added as § 2407 P.L. 99–145, § 1102(b)(1), Nov. 8, 1985, 99 Stat. 710; amended P.L. 99–661, §§ 1103(b), 1343(a)(15), Nov. 14, 1986, 100 Stat. 3963, 3993; transferred, redesignated § 2350b, and amended P.L. 101–189, § 931(a)(2), (e)(3), Nov. 29, 1989, 103 Stat. 1534, 1535; P.L. 104–106, §§ 1335, 4321(b)(10), Feb. 10, 1996, 110 Stat. 484, 672.)

§ 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 or 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 as § 2213 P.L. 97–252, § 1125(a), Sept. 8, 1982, 96 Stat. 757; amended P.L. 99–145, § 1304(b), Nov. 8, 1985, 99 Stat. 742; P.L. 100–26, § 7(k)(2), April 21, 1987, 101 Stat. 284; transferred, redesignated § 2350c, and amended P.L. 101–189, § 931(b)(2), (e)(4), Nov. 29, 1989, 103 Stat. 1534, 1535; amended P.L. 102–484, § 1311, Oct. 23, 1992, 106 Stat. 2547; P.L. 106–398, § 1[1222], Oct. 30, 2000, 114 Stat. 1654, 1654A–328.)

§ 2350d. Cooperative logistic support agreements: NATO countries

(a) GENERAL AUTHORITY.—(1) The Secretary of Defense may enter into bilateral or multilateral agreements known as Weapon System 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 Maintenance and Supply Organization. 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 Maintenance and Supply Organization; and

(B) shall provide for the common logistic support of a specific weapon system 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 Maintenance and Supply Organization; 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 Weapon System Partnership Agreement, the Secretary of Defense—

(1) may agree that the NATO Maintenance and Supply Organization 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 Maintenance and Supply Organization to provide cooperative logistics support and in the costs of establishing a revolving fund for initial acquisition and replenishment of supply stocks to be used by the NATO Maintenance and Supply Organization to provide cooperative logistics support.

(c) SHARING OF ADMINISTRATIVE EXPENSES.—Each Weapon System 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 Weapon System 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 Maintenance and Supply Organization for the purposes of a Weapon System 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 P.L. 101–189, §§ 931(c), 938(c), Nov. 29, 1989, 103 Stat. 1534, 1539, amended P.L. 102–484, § 843(b)(2), Oct. 23, 1992, 106 Stat. 2469; P.L. 103–35, § 202(a)(7), May 31, 1993, 107 Stat. 101.)

§ 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) Min-

isters 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 Cooperative 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 P.L. 101–189, § 932(a)(1), Nov. 29, 1989, 103 Stat. 1536; amended P.L. 102–190, § 1051, Dec. 5, 1991, 105 Stat. 1470; P.L. 103–160, § 1413, Nov. 30, 1993, 107 Stat. 1829.)

§ 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) The Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Serv-

ices 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.

(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 as § 2401a P.L. 98–525, § 1005(a), Oct. 19, 1984, 98 Stat. 2578; amended P.L. 100–26, § 7(k)(3), April 21, 1987, 101 Stat. 284; transferred, redesignated as § 2350f, and amended P.L. 101–189, § 933(a)–(d), Nov. 29, 1989, 103 Stat. 1537; P.L. 101–510, § 1484(k)(8), Nov. 5, 1990, 104 Stat. 1719; P.L. 104–106, § 1502(a)(2), Feb. 10, 1996, 110 Stat. 502; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 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 P.L. 101–510, § 1451(b), Nov. 5, 1990, 104 Stat. 1692; amended P.L. 103–160, § 1105(a), Nov. 30, 1993, 107 Stat. 1749; P.L. 106–65, § 1032(a)(3), Oct. 5, 1999, 113 Stat. 751.)

§ 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 P.L. 101–510, § 1452(a), Nov. 5, 1990, 104 Stat. 1693.)

§ 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 P.L. 102–190, § 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 committees specified in subsection (g) 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.

(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 committees specified in subsection (g)—

(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.

(g) CONGRESSIONAL COMMITTEES.—The congressional committees referred to in subsection (e) 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.

(Added P.L. 103–160, § 1402(a), Nov. 30, 1993, 107 Stat. 1825; amended P.L. 103–337, § 1070(a)(10), Oct. 5, 1994, 108 Stat. 2856; P.L. 104–106, § 1331, Feb. 10, 1996, 110 Stat. 482; P.L. 106–65, §§ 1067(1), 2801, Oct. 5, 1999, 113 Stat. 774, 845.)

§ 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.

(d) ANNUAL REPORT TO CONGRESS.—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.

(Added P.L. 104–106, § 1332(a)(1), Feb. 10, 1996, 110 Stat. 482.)

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. Repealed.]
[2356. Repealed.]
[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.
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. Repealed.]
[2363. Repealed.]
2364. Coordination and communication of defense research activities.
[2365. Repealed.]
2366. Major systems and munitions programs: survivability testing and lethality testing required before full-scale production.
2367. Use of federally funded research and development centers.
[2368. Repealed.]
[2369. Repealed.]
[2370. Repealed.]
2370a. Medical countermeasures against biowarfare threats: allocation of funding between near-term and other threats.
2371. Research projects: transactions other than contracts and grants.
2371a. Cooperative research and development agreements under Stevenson-Wydler Technology Innovation Act of 1980.
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.
2374a. Prizes for advanced technology achievements.

§ 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 for the Department of Defense.

(Added as § 2361 P.L. 97–258, § 2(b)(3)(B), Sept. 13, 1982, 96 Stat. 1052; transferred, redesignated as § 2351, and amended P.L. 100–370, § 1(g)(1), July 19, 1988, 102 Stat. 846.)

[§ 2352. Repealed. P.L. 104–106, § 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.)

§ 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.)

[§ 2355. Repealed. P.L. 103–355, § 2002(a), Oct. 13, 1994, 108 Stat. 3303]

[§ 2356. Repealed. P.L. 104–106, § 802(a), Feb. 10, 1996, 110 Stat. 390]

[§ 2357. Repealed. P.L. 101–510, § 1301(11), Nov. 5, 1990, 104 Stat. 1668]

§ 2358. Research and development projects [1]

(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] Section 606 of P.L. 92–436 provides:

SEC. 606. (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 [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.

Section 252 of the National Defense Authorization Act for Fiscal Year 1994 (P.L. 103–160; 107 Stat. 1607) provides:

SEC. 252. INCLUSION OF WOMEN AND MINORITIES IN CLINICAL RESEARCH PROJECTS.

(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.

Subsections (a) through (d) of section 802 of the National Defense Authorization Act for Fiscal Year 1994 (P.L. 103–160), as amended, provide:

(a) ESTABLISHMENT.—The Secretary of Defense, through the Director of Defense Research and Engineering, may establish a University Research Initiative Support Program.

(b) PURPOSE.—Under the program, the Director 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 Director shall use competitive procedures in awarding grants and contracts under the program.

(e) SELECTION PROCESS.—In awarding grants and contracts under the program, the Director shall use a merit-based selection process that is consistent with the provisions of section 2361(a) of title 10, United States Code.

Section 257 of the National Defense Authorization Act for Fiscal Year 1995 (P.L. 103–337), as amended, provides:

SEC. 257. DEFENSE EXPERIMENTAL PROGRAM TO STIMULATE COMPETITIVE RESEARCH.

(a) PROGRAM REQUIRED.—The Secretary of Defense, acting through the Director of Defense Research and Engineering, shall carry out a Defense Experimental Program to Stimulate Com-

Continued

(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

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petitive 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 research grants.

(2) Competitive award of financial assistance for graduate students.

(d) ELIGIBLE STATES.—(1) The Under Secretary of Defense for Acquisition and Technology shall designate which States are eligible States for the purposes of this section.

(2) The Under Secretary of Defense for Acquisition and Technology 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 shall be made to, and all awards shall 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.

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 P.L. 87–651, § 208(a), Sept. 7, 1962, 76 Stat. 523; amended P.L. 97–86, § 910, Dec. 1, 1981, 95 Stat. 1120; P.L. 100–370, § 1(g)(3), July 19, 1988, 102 Stat. 846; revised in its entirety P.L. 103–160, § 827(a), Nov. 30, 1993, 107 Stat. 1712; revised in its entirety P.L. 103–355, § 1301(a), Oct. 13, 1994, 108 Stat. 3284; P.L. 104–201, § 267(c)(2), Sept. 23, 1996, 110 Stat. 2468.)

§ 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 P.L. 106–398, § 1[904(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–225 [prior sec. 2359 repealed Nov. 5, 1990].)

§ 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 P.L. 97–86, § 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 P.L. 100–456, § 220(a), Sept. 29, 1988, 102 Stat. 1941 [prior § 2361 transferred to § 2351 P.L. 100–370, § 1(g)(1), July 19, 1988, 102 Stat. 846]; amended P.L. 101–189, § 252(a), (b)(1), Nov. 29, 1989, 103 Stat. 1404; P.L. 101–189, § 252(a), (b)(1), (c)(1), Nov. 29, 1989, 103 Stat. 1404, 1405; P.L. 101–510, § 1311(4), Nov. 5, 1990, 104 Stat. 1669; P.L. 103–35, § 201(g)(5), May 31, 1993, 107 Stat. 100; P.L. 103–160, § 821(b), Nov. 30, 1993, 107 Stat. 1704; P.L. 103–337, § 813, Oct. 5, 1994, 108 Stat. 2816; P.L. 104–106, §§ 264, 1502(a)(1), Feb. 10, 1996, 110 Stat. 237, 502; P.L. 104–201, § 265, Sept. 23, 1996, 110 Stat. 2466.)

[§ 2362. Repealed. P.L. 103–160, § 821(a)(3), Nov. 30, 1993, 107 Stat. 1704]

[§ 2363. Repealed. Pub. L. 102–484, § 4271(a)(2), Oct. 23, 1992, 106 Stat. 2695]

§ 2364. Coordination and communication of defense research activities [2]

(a) COORDINATION OF DEPARTMENT OF DEFENSE TECHNOLOGICAL DATA.—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.

(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;

(4) that technology position papers prepared by Defense research facilities are readily available to all combatant commands and to contractors who submit bids or proposals for Department of Defense contracts; and

(5) that, in order to promote increased consideraton of technological issues early in the development process, 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.

(c) DEFINITIONS.—In this section:

(1) The term "Defense research facility" means a Department of Defense facility which performs or contracts for the performance of—

(A) basic research; or

(B) applied research known as exploratory development.

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[2] Section 913(b) of the National Defense Authorization Act for Fiscal Year 2000 (P.L. 106–65; 113 Stat. 720) provides:

(b) PERFORMANCE REVIEW PROCESS.—Not later than 180 days after [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.

(2) The term "acquisition program decision" has the meaning prescribed by the Secretary of Defense in regulations.

(Added P.L. 99–661, § 234(c), Nov. 14, 1986, 100 Stat. 3848; amended P.L. 100–26, § 7(a)(9), April 21, 1987, 101 Stat. 278; P.L. 100–180, § 1231(10) (A), (B), Dec. 4, 1987, 101 Stat. 1160; P.L. 104–106, § 805, Feb. 10, 1996, 110 Stat. 390.)

[§ 2365. Repealed. Pub. L. 102–484, § 821(c)(1), Oct. 23, 1992, 106 Stat. 2460]

§ 2366. Major systems and munitions programs: survivability 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, before the system or program enters engineering and manufacturing development, certifies to Congress that live-fire testing of such system or program would be unreasonably expensive and impractical.

(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 engineering and manufacturing development, 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.—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.

(e) DEFINITIONS.—In this section:

(1) 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.

(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 "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.

(Added by identical amendments P.L. 99–500, 99–591, 99–661, §§ 101(c) [§ 910(a)], 101(c) [§ 910(a)], 910(a), Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–143, 3341–143, 3923; amended P.L. 100–180, §§ 802, 1231 (11), Dec. 4, 1987, 101 Stat. 1123, 1160; P.L. 101–189, §§ 802(c), 804, Nov. 29, 1989, 103 Stat. 1486, 1488; P.L. 103–160, § 828(d)(2), Nov. 30, 1993, 107 Stat. 1715; P.L. 103–355, § 3014, Oct. 13, 1994, 108 Stat. 3332; P.L. 104–106, § 1502(a)(18), Feb. 10, 1996, 110 Stat. 504; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 2367. Use of federally funded research and development centers [3]

(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.

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[3] Section 8032 of the Department of Defense Appropriations Act, 2001 (P.L. 106–259; 114 Stat. 681), provides:

SEC. 8032. (a) None of the funds appropriated in this Act are available to establish a new Department of Defense (department) federally funded research and development center (FFRDC), either as a new entity, or as a separate entity administrated by an organization managing another FFRDC, or as a nonprofit membership corporation consisting of a consortium of other FFRDCs and other non-profit entities.

(b) No member of a Board of Directors, Trustees, Overseers, Advisory Group, Special Issues Panel, Visiting Committee, or any similar entity of a defense FFRDC, and no paid consultant to any defense FFRDC, except when acting in a technical advisory capacity, may be compensated for his or her services as a member of such entity, or as a paid consultant by more than one FFRDC in a fiscal year: *Provided*, That a member of any such entity referred to previously in this subsection shall be allowed travel expenses and per diem as authorized under the Federal Joint Travel Regulations, when engaged in the performance of membership duties.

(c) Notwithstanding any other provision of law, none of the funds available to the department from any source during fiscal year 2001 may be used by a defense FFRDC, through a fee or other payment mechanism, for construction of new buildings, for payment of cost sharing for projects funded by Government grants, for absorption of contract overruns, or for certain charitable contributions, not to include employee participation in community service and/or development.

(d) Notwithstanding any other provision of law, of the funds available to the department during fiscal year 2001, not more than 6,227 staff years of technical effort (staff years) may be funded for defense FFRDCs: *Provided*, That of the specific amount referred to previously in this subsection, not more than 1,009 staff years may be funded for the defense studies and analysis FFRDCs.

(e) The Secretary of Defense shall, with the submission of the department's fiscal year 2002 budget request, submit a report presenting the specific amounts of staff years of technical effort to be allocated for each defense FFRDC during that fiscal year.

(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.—(1) 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.

(2) 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 by identical amendments P.L. 99–500, 99–591, 99–661, §§ 101(c) [§ 912(a)], 101(c) [§ 912(a)], 912(a), Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–146, 3341–146, 3925; amended P.L. 102–190, § 256(a), Dec. 5, 1991, 105 Stat. 1330, P.L. 104–106, § 1502(a)(9), Feb. 10, 1996, 110 Stat. 503; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

[§ 2368. Repealed. P.L. 102–190, § 821(c), Dec. 5, 1991, 105 Stat. 1431]

[§ 2369. Repealed. P.L. 103–355, § 3062(a), Oct. 13, 1994, 108 Stat. 3336]

[§ 2370. Repealed. P.L. 104–106, § 1061(j)(1), Feb. 10, 1996, 110 Stat. 443]

§ 2370a. Medical countermeasures against biowarfare threats: allocation of funding between near-term and other threats

(a) ALLOCATION BETWEEN NEAR-TERM AND OTHER THREATS.—Of the funds appropriated or otherwise made available for any fiscal year for the medical component of the Biological Defense Research Program (BDRP) of the Department of Defense—

(1) not more than 80 percent may be obligated and expended for product development, or for research, development,

test, or evaluation, of medical countermeasures against near-term validated biowarfare threat agents; and

(2) not more than 20 percent may be obligated or expended for product development, or for research, development, test, or evaluation, of medical countermeasures against mid-term or far-term validated biowarfare threat agents.

(b) DEFINITIONS.—In this section:

(1) The term "validated biowarfare threat agent" means a biological agent that—

(A) is named in the biological warfare threat list published by the Defense Intelligence Agency; and

(B) is identified as a biowarfare threat by the Deputy Chief of Staff of the Army for Intelligence in accordance with Army regulations applicable to intelligence support for the medical component of the Biological Defense Research Program.

(2) The term "near-term validated biowarfare threat agent" means a validated biowarfare threat agent that has been, or is being, developed or produced for weaponization within 5 years, as assessed and determined by the Defense Intelligence Agency.

(3) The term "mid-term validated biowarfare threat agent" means a validated biowarfare threat agent that is an emerging biowarfare threat, is the object of research by a foreign threat country, and will be ready for weaponization in more than 5 years and less than 10 years, as assessed and determined by the Defense Intelligence Agency.

(4) The term "far-term validated biowarfare threat agent" means a validated biowarfare threat agent that is a future biowarfare threat, is the object of research by a foreign threat country, and could be ready for weaponization in more than 10 years and less than 20 years, as assessed and determined by the Defense Intelligence Agency.

(5) The term "weaponization" means incorporation into usable ordnance or other militarily useful means of delivery.

(Added P.L. 103–160, § 214(a), Nov. 30, 1993, 107 Stat. 1586.)

§ 2371. Research projects: transactions other than contracts and grants [4]

(a) ADDITIONAL FORMS OF TRANSACTIONS AUTHORIZED.—The Secretary of Defense and the Secretary of each military department

[4] Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (P.L. 103–160), as amended, provides:

SEC. 845. AUTHORITY OF THE DEFENSE ADVANCED RESEARCH PROJECTS AGENCY TO CARRY OUT CERTAIN PROTOTYPE PROJECTS.

(a) AUTHORITY.—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 title 10, United States Code, carry out prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense.

(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 REVIEW.—(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

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 pro-

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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 title 10, United States Code.

(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—

(A) there is at least one nontraditional defense contractor participating to a significant extent in the prototype project; or

(B) no nontraditional defense contractor is participating to a significant extent in the prototype project, but at least one of the following circumstances exists:

(i) 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.

(ii) The senior procurement executive for the agency (as designated for the purposes of section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) 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.

(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) NONTRADITIONAL DEFENSE CONTRACTOR DEFINED.—In this section, the term "nontraditional defense contractor" means an entity that has not, for a period of at least one year prior to the date that a transaction (other than a contract, grant, or cooperative agreement) for a prototype project under the authority of this section is entered into, entered into or performed with respect to—

(1) any contract that is subject to full coverage under the cost accounting standards prescribed pursuant to section 26 of the Office of Federal Procurement Policy Act (41 U.S.C. 422) and the regulations implementing such section; or

(2) any other contract in excess of $500,000 to carry out prototype projects or to perform basic, applied, or advanced research projects for a Federal agency, that is subject to the Federal Acquisition Regulation.

(f) PERIOD OF AUTHORITY.—The authority to carry out projects under subsection (a) shall terminate at the end of September 30, 2004.

vided 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) ANNUAL REPORT.—(1) Not later than 90 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 Armed Services of the House of Representatives a report on the use by the Department of Defense during such fiscal year of—

(A) cooperative agreements authorized under section 2358 of this title that contain a clause under subsection (d); and

(B) transactions authorized by subsection (a).

(2) The report shall include, with respect to the cooperative agreements and other transactions covered by the report, the following:

(A) The technology areas in which research projects were conducted under such agreements or other transactions.

(B) The extent of the cost-sharing among Federal Government and non-Federal sources.

(C) The extent to which the use of the cooperative agreements and other transactions—

(i) has contributed to a broadening of the technology and industrial base available for meeting Department of Defense needs; and

(ii) has fostered within the technology and industrial base new relationships and practices that support the national security of the United States.

(D) The total amount of payments, if any, that were received by the Federal Government during the fiscal year covered by the report pursuant to a clause described in subsection (d) that was included in the cooperative agreements and other transactions, and the amount of such payments, if any, that were credited to each account established under subsection (f).

(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 P.L. 101–189, § 251(a)(1), Nov. 29, 1989, 103 Stat. 1403; amended P.L. 101–510, § 1484(k)(9), Nov. 5, 1990, 104 Stat. 1719; P.L. 102–190, § 826, Dec. 5, 1991, 105 Stat. 1442; P.L. 102–484, § 217, Oct. 23, 1992, 106 Stat. 2352; P.L. 103–35, § 201(c)(4), May 31, 1993, 107 Stat. 98; P.L. 103–160, §§ 827(b), 1182(a)(6), Nov. 30, 1993, 107 Stat. 1712; revised in its entirety P.L. 103–355, § 1301(b), Oct. 13, 1994, 108 Stat. 3285; P.L. 104–106, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; P.L. 104–201, §§ 267(a)–(c)(1)(A), 1073(e)(1)(B), Sept. 23, 1996, 110 Stat. 2467, 2658; P.L. 105–85, § 832, Nov. 18, 1997, 111 Stat. 1842; P.L. 105–261, § 817, Oct. 17, 1998, 112 Stat. 2089; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 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 P.L. 104–201, § 267(c)(1)(A), (B), Sept. 23, 1996, 110 Stat. 2468 [formerly 2371(i)]; amended P.L. 105–85, § 1073(a)(50), Nov. 18, 1997, 111 Stat. 1903.)

§ 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 P.L. 101–510, § 824(a), Nov. 5, 1990, 104 Stat. 1603; amended P.L. 102–25, § 701(c), April 6, 1991, 105 Stat. 113; P.L. 102–190, § 802(a)(1), Dec. 5, 1991, 105 Stat. 1412; P.L. 102–484, § 1052(27), Oct. 23, 1992, 106 Stat. 2500; P.L. 103–35, § 201(c)(5), May 31, 1993, 107 Stat. 98; P.L. 104–106, § 4321(b)(11), Feb. 10, 1996, 110 Stat. 672.)

§ 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, 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 quantity.

(Added P.L. 103–160, § 822(c)(1), Nov. 30, 1993, 107 Stat. 1706; amended P.L. 103–337, § 1070(g), Oct. 5, 1994, 108 Stat. 2859; P.L. 104–106, § 812, Feb. 10, 1996, 110 Stat. 395.)

§ 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 P.L. 103–355, § 7203(a)(2), Oct. 13, 1994, 108 Stat. 3380.)

§ 2374a. Prizes for advanced technology achievements

(a) AUTHORITY.—The Secretary of Defense, acting through the Director of the Defense Advanced Research Projects Agency, may carry out a program 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.—The 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) The total amount made available for award of cash prizes in a fiscal year may not exceed $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.—The program under subsection (a) may be carried out in conjunction with or in addition to the exercise of any other authority of the Director to acquire, support, or stimulate basic, advanced and applied research, technology development, or prototype projects.

(e) ANNUAL REPORT.—Promptly after the end of each fiscal year, 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.

(f) PERIOD OF AUTHORITY.—The authority to award prizes under subsection (a) shall terminate at the end of September 30, 2003.

(Added P.L. 106–65, § 244(a), Oct. 5, 1999, 113 Stat. 552.)

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.
2378. Procurement of copier paper containing specified percentages of post-consumer recycled content.

§ 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 34 of the Office of Federal Procurement Policy Act).

(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 P.L. 103–355, § 8102, Oct. 13, 1994, 108 Stat. 3390; amended P.L. 105–85, § 1073(a)(51), Nov. 18, 1997, 111 Stat. 1903.)

§ 2376. Definitions

In this chapter:

(1) The terms "commercial item", "nondevelopmental item", "component", and "commercial component" have the meanings provided in section 4 of the Office of Federal Procurement Policy Act.

(2) The term "head of an agency" means the Secretary of Defense, the Secretary of Transportation, 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 P.L. 103–355, § 8103, Oct. 13, 1994, 108 Stat. 3390.)

§ 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 commercial 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; and

(B) before soliciting bids or proposals for a contract 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).

(Added P.L. 103–355, § 8104(a), Oct. 13, 1994, 108 Stat. 3390.)

§ 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 P.L. 105–85, § 350(a), Nov. 18, 1997, 111 Stat. 1691.)

CHAPTER 141—MISCELLANEOUS PROCUREMENT PROVISIONS

Sec.
2381. Contracts: regulations for bids.
[2382. Repealed.]
[2383. Repealed.]
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. Liquid fuels and natural gas: contracts for storage, handling, or distribution.
[2389. Repealed.]
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. Contracts for energy or fuel for military installations.
2394a. Procurement of energy systems using renewable forms of energy.
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. Repealed.]
[2397a. Repealed.]
[2397b. Repealed.]
[2397c. Repealed.]
2398. Procurement of gasohol as motor vehicle fuel.
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 and aircraft.
2401a. Lease of vehicles, equipment, vessels, and aircraft.
2402. Prohibition of contractors limiting subcontractor sales directly to the United States.
[2403. Repealed.]
2404. Acquisition of certain fuel sources: authority to waive contract procedures; acquisition by exchange; sales authority.
[2405. Repealed.]
[2406. Repealed.]
[2407. Transferred.]
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. Severable service contracts for periods crossing fiscal years.
2410b. Contractor inventory accounting systems: standards.
2410c. Preference for energy efficient electric equipment.
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. Acquisition fellowship program.
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.
2410l. Contracts for advisory and assistance services: cost comparison studies.
2410m. Retention of amounts collected from contractor during the pendency of contract dispute.

§ 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 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486), unless exempted therefrom under section 201(a) of that Act (40 U.S.C. 481(a)).

(Aug. 10, 1956, ch. 1041, 70A Stat. 136; Oct. 19, 1984, P.L. 98–525, § 1405(35), 98 Stat. 2624; Oct. 13, 1994, P.L. 103–355, § 1507, 108 Stat. 3298.)

[§ 2382. Repealed. P.L. 103–355, § 2102(a), Oct. 13, 1994, 108 Stat. 3309]

[§ 2383. Repealed. P.L. 104–106, § 803(a), Feb. 10, 1996, 110 Stat. 390]

§ 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 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).

(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 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).

(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; Oct. 19, 1984, P.L. 98–525, § 1231(a), 98 Stat. 2599; amended identically P.L. 99–500, 99–591, 99–661, §§ 101(c) [§ 928(a)], 101(c) [§ 928(a)], 928(a), Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–156, 3341–156, 3936; Oct. 13, 1994, P.L. 103–355, §§ 4102(d), 8105(b), 108 Stat. 3340, 3392; Feb. 10, 1996, P.L. 104–106, § 4321(b)(12), 110 Stat. 673.)

§ 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 P.L. 98–525, § 1233(a), Oct. 19, 1984, 98 Stat. 2600.)

§ 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.)

§ 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; Sept. 8, 1960, P.L. 86–726, § 3, 74 Stat. 855; Oct. 13, 1994, P.L. 103–355, § 3063, 108 Stat. 3337; Feb. 10, 1996, P.L. 104–106, § 813, 110 Stat. 395.)

§ 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 P.L. 85–861, § 1(45), Sept. 2, 1958, 72 Stat. 1458.)

§ 2388. 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 P.L. 85–861, § 1(46), Sept. 2, 1958, 72 Stat. 1458; amended P.L. 97–214, § 10(a)(3), July 12, 1982, 96 Stat. 175; P.L. 97–258, § 3(b)(6), Sept. 13, 1982, 96 Stat. 1063; P.L. 97–295, § 1(27), Oct. 12, 1982, 96 Stat. 1291; P.L. 98–525, § 1405(56)(A), Oct. 19, 1984, 98 Stat. 2626; P.L. 101–510, § 1322(a)(6), Nov. 5, 1990, 104 Stat. 1671; P.L. 103–160, § 825, Nov. 30, 1993, 107 Stat. 1712; P.L. 103–355, § 3064, Oct. 13, 1994, 108 Stat. 3337.)

[§ 2389. Repealed. P.L. 103–160, § 821(a)(4), Nov. 30, 1993, 107 Stat. 1704]

§ 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 as § 975 P.L. 95–485, § 815(a), Oct. 20, 1978, 92 Stat. 1625; amended P.L. 100–26 § 7(k)(3), April 21, 1987, 101 Stat. 284; transferred and redesignated § 2390 P.L. 101–189, § 1622(b)(1), Nov. 29, 1989, 103 Stat. 1604.)

§ 2391. Military base reuse studies and community planning assistance [1]

(a) REUSE STUDIES.—Whenever the Secretary of Defense or the Secretary of the military department concerned publicly announces

[1] Section 8149 of the Department of Defense Appropriations Act, 1992 (P.L. 102–172; 105 Stat. 1214), provides:

SEC. 8149. (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.

Continued

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)(1) ADJUSTMENT AND DIVERSIFICATION ASSISTANCE.—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 likely 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 significantly reduced operations of a defense facility, 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, cancellation, termination, or failure will have a direct

(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.

and significant adverse impact on a 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.

(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) ANNUAL REPORT.—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.

(d) DEFINITIONS.—In this section:

(1) 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.

(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 P.L. 97–86, § 912(a)(1), Dec. 1, 1981, 95 Stat. 1122; amended P.L. 98–115, § 808, Oct. 11, 1983, 97 Stat. 789; P.L. 100–26, § 7(k)(3), April 21, 1987, 101 Stat. 284; P.L. 100–456, § 2805, Sept. 29, 1988, 102 Stat. 2116; P.L. 101–510, § 4102(b), Nov. 5, 1990, 104 Stat. 1851; P.L. 102–25, § 701(j)(3), April 6, 1991, 105 Stat. 116; P.L. 102–484, §§ 1051(28), 4301(a)–(c), Oct. 23, 1992, 106 Stat. 2500, 2696; P.L. 103–160, § 2913, Nov. 30, 1993, 107 Stat. 1925; P.L. 103–337, §§ 1122(a), 1123(a), (b), Oct. 5, 1994, 108 Stat. 2870; P.L. 104–106, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; P.L. 104–201, § 2814, Sept. 23, 1996, 110 Stat. 2790; P.L. 105–85, § 2822, Nov. 18, 1997, 111 Stat. 1997; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 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 P.L. 97–86, § 913(a)(1), Dec. 1, 1981, 95 Stat. 1123.)

§ 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 in a file available for public inspection.

(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 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))). 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))).

(Added P.L. 97–86, § 914(a), Dec. 1, 1981, 95 Stat. 1124; amended P.L. 100–180, § 1231(17), Dec. 4, 1987, 101 Stat. 1161; P.L. 101–510, § 813(a), Nov. 5, 1990, 104 Stat. 1596; P.L. 102–190, § 1061(a)(11), Dec. 5, 1991, 105 Stat. 1473; P.L. 103–355, §§ 4102(e), 8105(c), Oct. 13, 1994, 108 Stat. 3340, 3392.)

§ 2394. 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 2689 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 P.L. 97–214, § 6(a)(1), July 12, 1982, 96 Stat. 171; amended P.L. 97–321, § 805(b)(3), Oct. 15, 1982, 96 Stat. 1573; P.L. 101–510, § 1301(12), Nov. 5, 1990, 104 Stat. 1668.)

§ 2394a. 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 and will be cost effective, reliable, and otherwise suited to supplying the energy needs of the military department under his jurisdiction.

(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 cost effective and 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 2857 of this title.

(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)).

(Added P.L. 97–321, § 801(a)(1), Oct. 15, 1982, 96 Stat. 1569; amended P.L. 98–525, § 1405(36), Oct 19, 1984, 98 Stat. 2623; P.L. 101–510, §§ 1322(a)(7), 2852(a), Nov. 5, 1990, 104 Stat. 1671, 1804; P.L. 102–25, § 701(g)(2), April 6, 1991, 105 Stat. 115.)

§ 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 as § 2394 P.L. 97–258, § 2(b)(4)(B), Sept. 13, 1982, 96 Stat. 1053; redesignated § 2395 and amended P.L. 97–295, § 1(28)(A), Oct. 12, 1982, 96 Stat. 1291.)

§ 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 Transportation 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 as § 2395 P.L. 97–258, § 2(b)(4)(B), Sept. 13, 1982, 96 Stat. 1053; redesignated § 2396 and amended P.L. 97–295, § 1(28)(B), Oct. 12, 1982, 96 Stat. 1291; P.L. 105–85, § 1014(a), (b)(1), Nov. 18, 1997, 111 Stat. 1875.)

[§§ 2397, 2397a, 2397b, and 2397c. Repealed. P.L. 104–106, § 4304(b)(1), Feb. 10, 1996, 110 Stat. 664] [2]

§ 2398. Procurement of gasohol as motor vehicle fuel [3]

(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 P.L. 97–295, § 1(29)(A), Oct. 12, 1982, 96 Stat. 1293; amended P.L. 102–190, § 841(a), Dec. 5, 1991, 105 Stat. 1448, P.L. 104–106, § 1061(h), Feb. 10, 1996, 110 Stat. 443.)

§ 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 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) a conventional weapons system that 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.

(b) OPERATIONAL TEST AND EVALUATION.—(1) Operational testing of a major defense acquisition program may not be conducted

[2] The subject matter formerly covered by sections 2397, 2397a, 2397b, and 2397c, relating to procurement integrity, is now covered by section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423).

[3] Subsection (d) of section 841 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (P.L. 102–190, 105 Stat. 1449) provides:

(d) SENSE OF CONGRESS.—[42 U.S.C. 8871 note] It is the sense of Congress that whenever any motor vehicle capable of operating on gasoline or alcohol-gasoline blends that is owned or operated by the Department of Defense or any other department or agency of the Federal Government is refueled, it shall be refueled with an alcohol-gasoline blend containing at least 10 percent domestically produced alcohol if available along the normal travel route of the vehicle at the same or lower price than unleaded gasoline.

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 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.

(3) The Director shall submit each report under paragraph (2) to the Secretary of Defense, the Under Secretary of Defense for Acquisition and Technology, 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) 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) DEFINITIONS.—In this section:

(1) 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—

(A) computer modeling;

(B) simulation; or

(C) an analysis of system requirements, engineering proposals, design specifications, or any other information contained in program documents.

(2) 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.

(Added P.L. 101–189, § 802(a)(1), Nov. 29, 1989, 103 Stat. 1484; amended P.L. 102–484, § 819, Oct. 23, 1992, 106 Stat. 2458; P.L. 103–160, § 904(d), Nov. 30, 1993, 107 Stat. 1728; P.L. 103–337, § 1070(a)(11), (f), Oct. 5, 1994, 108 Stat. 2856, 2859; P.L. 104–106, § 1502(a)(19), Feb. 10, 1996, 110 Stat. 504; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

[Former § 2399 repealed. P.L. 100–370, § 1(f)(2), July 19, 1988, 102 Stat. 846 (See section 2324(e)(1)(L))]

§ 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 II 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 II decision" means the decision to approve the engineering and manufacturing development 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 II 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 II 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 P.L. 101–189, § 803(a), Nov. 29, 1989, 103 Stat. 1487 [former § 2400 transferred to § 2502 and then § 2507]; amended P.L. 103–355, § 3015, Oct. 13, 1994, 108 Stat. 3332, P.L. 104–106, §§ 1062(d), 4321(b)(13), Feb. 10, 1996, 110 Stat. 444, 673.)

§ 2401. Requirement for authorization by law of certain contracts relating to vessels and aircraft

(a)(1) The Secretary of a military department may make a contract for the lease of a vessel or aircraft or for the provision of a service through use by a contractor of a vessel or aircraft 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 Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives of the Secretary's intention to issue such a solicitation; and

(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 or aircraft 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.

(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.

(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 or naval vessel; or

(B) for the lease or charter of any aircraft or naval vessel 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 or aircraft; 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 straight-line 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 or aircraft 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 or aircraft involved.

(e)(1) Whenever a request is submitted to Congress for the authorization of the long-term lease or charter of aircraft or naval vessels or for the authorization of a lease or charter of aircraft or naval vessels 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 or naval vessels 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 or naval vessels 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) 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 and naval vessels rather than directly procuring such aircraft and vessels.

(Added P.L. 98–94, § 1202(a)(1), Sept. 24, 1983, 97 Stat. 679; amended P.L. 98–525, § 1232(a), Oct. 19, 1984, 98 Stat. 2600; P.L. 100–26, § 7(h)(1), April 21, 1987, 101 Stat. 282; P.L. 103–35, § 201(c)(6), May 31, 1993, 107 Stat. 98; P.L. 104–106, §§ 1502(a)(20), 1503(a)(21), Feb. 10, 1996, 110 Stat. 504, 512; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774; P.L. 106–398, § 1[1087(a)(13)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291.)

§ 2401a. Lease of vehicles, equipment, vessels, and aircraft [4]

(a) LEASING OF COMMERCIAL VEHICLES AND EQUIPMENT.—The Secretary of Defense may use leasing in the acquisition of commer-

[4] Section 8126 of the Department of Defense Appropriations Act, 1999 (P.L. 105–262; 112 Stat. 2333), provides:

SEC. 8126. (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

cial 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 P.L. 103–355, § 3065(a)(1), Oct. 13, 1994, 108 Stat. 3337 [Former § 2401a transferred to § 2350f]; amended P.L. 104–106, § 807(a)(1), Feb. 10, 1996, 110 Stat. 391; P.L. 105–85, § 1073(a)(52), Nov. 18, 1997, 111 Stat. 1903; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 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 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).

(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.

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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.

(2) In paragraph (1), the term "commercial item" has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).

(Added P.L. 98–525, § 1234(a), Oct. 19, 1984, 98 Stat. 2601; amended P.L. 103–355, §§ 4102(f), 8105(g), Oct. 13, 1994, 108 Stat. 3340, 3392.)

[§ 2403. Repealed. P.L. 105–85, § 847(a), Nov. 18, 1997, 111 Stat. 1845]

§ 2404. 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.

(e) PETROLEUM DEFINED.—In this section, 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.

(f) DEFINED FUEL SOURCES.—In this section, the term "defined fuel source" means any of the following:

(1) Petroleum.
(2) Natural gas.
(3) Coal.
(4) Coke.

(Added P.L. 98–525, § 1234(a), Oct. 19, 1984, 98 Stat. 2604; amended P.L. 100–26, § 7(k)(3), April 21, 1987, 101 Stat. 284; P.L. 101–510, § 1322(a)(8), Nov. 5, 1990, 104 Stat. 1671; P.L. 103–160, § 826, Nov. 30, 1993, 107 Stat. 1711; P.L. 106–65, § 803(a), (b)(1), Oct. 5, 1999, 113 Stat. 703.)

[§ 2405. Repealed. P.L. 105–85, § 810(a)(1), Nov. 18, 1997, 111 Stat. 1839]

[§ 2406. Repealed. P.L. 103–355, § 2201(b)(1), Oct. 13, 1994, 108 Stat. 3326]

[§ 2407. Transferred to § 2350b]

§ 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 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).

(B) A contract referred to in such subparagraph that is 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))).

(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 estab-

lished 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 by identical amendments P.L. 99–500, 99–591, 99–661, §§ 101(c) [§ 941(a)], 101(c) [§ 941(a)], 941(a), Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–161, 3341–161, 3941; amended P.L. 100–456, § 831, Sept. 29, 1988, 102 Stat. 2023; P.L. 101–510, § 812, Nov. 5, 1990, 104 Stat. 1596; P.L. 102–484, § 815(a), Oct. 23, 1992, 106 Stat. 2454; P.L. 103–355, §§ 4102(g), 8105(h), Oct. 13, 1994, 108 Stat. 3340, 3393; P.L. 104–106, § 1062(e), Feb. 10, 1996, 110 Stat. 444.)

§ 2409. Contractor employees: protection from reprisal for disclosure of certain information

(a) PROHIBITION OF REPRISALS.—An employee of a contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a Member of Congress or an authorized official of an agency or the Department of Justice information relating to a substantial violation of law related to a contract (including the competition for or negotiation of a contract).

(b) INVESTIGATION OF COMPLAINTS.—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 an agency. Unless the Inspector General determines that the complaint is frivolous, 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.

(c) REMEDY AND ENFORCEMENT AUTHORITY.—(1) 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 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 the compensation (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) 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 and compensatory and exemplary damages.

(3) 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.

(d) CONSTRUCTION.—Nothing in this section may be construed to authorize the discharge of, demotion of, or discrimination against an employee 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.

(e) 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.

(Added by identical amendments P.L. 99–500, 99–591, 99–661, §§ 101(c) [§ 942(a)], 101(c) [§ 942(a)], 942(a), Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–162, 3341–162, 3942; amended P.L. 102–25, § 701(k)(1), April 6, 1991, 105 Stat. 116; P.L. 102–484, § 1052(30), Oct. 23, 1992, 106 Stat. 2500; revised in its entirety P.L. 103–355, § 6005(a), Oct. 13, 1994, 108 Stat. 3364.)

[§ 2409a. Repealed. P.L. 103–355, § 6005(b), Oct. 13, 1994, 108 Stat. 3365]

§ 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 4(11) of the Office of Federal Procurement Policy Act.

(Added P.L. 103–355, § 2301(a), Oct. 13, 1994, 108 Stat. 3320.)

§ 2410a. Severable service contracts for periods crossing fiscal years

(a) AUTHORITY.—The Secretary of Defense, the Secretary of a military department, or the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, may enter into a contract for procurement of severable services 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.

(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 P.L. 100–370, § 1(h)(2), July 19, 1988, 102 Stat. 847; amended P.L. 102–190, § 342, Dec. 5, 1991, 105 Stat. 1343; P.L. 104–324, § 214(b), Oct. 19, 1996, 110 Stat. 3915; amended in its entirety P.L. 105–85, § 801(a), Nov. 18, 1997. 111 Stat. 1831.)

§ 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 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).

(Added P.L. 100–456, § 834(a), Sept. 29, 1988, 102 Stat. 2024; amended P.L. 103–355, §§ 4102(h), 8105(i) Oct. 13, 1994, 108 Stat. 3341, 3393; P.L. 104–106, § 4301(a)(1), Feb. 10, 1996, 110 Stat. 656.)

§ 2410c. Preference for energy efficient electric equipment

(a) When cost effective, 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, as the case may be.

(b) Subsection (a) applies to the following electric equipment:

(1) Electric lamps.

(2) Electric ballasts.

(3) Electric motors.

(4) Electric refrigeration equipment.

(Added P.L. 102–484, § 384(a)(1)(A), Oct. 23, 1992, 106 Stat. 2392.)

§ 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 5(3) of the Javits-Wagner-O'Day Act (41 U.S.C. 48b(3));

(B) a qualified nonprofit agency for other severely handicapped, as defined in section 5(4) of such Act (41 U.S.C. 48b(4)); and

(C) a central nonprofit agency designated by the Committee for Purchase from People Who Are Blind or Severely Disabled under section 2(c) of such Act (41 U.S.C. 47(c)).

(Added P.L. 102–484, § 808(b)(1), Oct. 23, 1992, 106 Stat. 2449; amended P.L. 103–337, § 804, Oct. 5, 1994, 108 Stat. 2815; P.L. 104–106, § 4321(b)(15), Feb. 10, 1996, 110 Stat. 673; P.L. 105–85, § 835, Nov. 18, 1997. 111 Stat. 1843; P.L. 106–65, § 807, Oct. 5, 1999, 113 Stat. 705.)

[§ 2410e. Repealed. P.L. 103–355, § 2301(b), Oct. 13, 1994, 108 Stat. 3321]

§ 2410f. Debarment of persons convicted of fraudulent use of "Made in America" labels [5]

(a) If the Secretary of Defense determines that a person has been convicted of intentionally affixing a label bearing a "Made in America" inscription 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 P.L. 102–484, § 834(a)(1), Oct. 23, 1992, 106 Stat. 2461; amended P.L. 104–106, §§ 1062(f), 1503(a)(22) Feb. 10, 1996, 110 Stat. 444, 512.)

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[5] Section 816(b) of the National Defense Authorization Act for Fiscal Year 2000 (P.L. 106–65; 113 Stat. 712) and section 825(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654A–220) each provide:

(b) DEBARMENT OF PERSONS CONVICTED OF FRAUDULENT USE OF "MADE IN AMERICA" LABELS.—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.

§ 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 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).

(2) Military construction.

(3) Ores.

(4) Natural gas.

(5) Utilities.

(6) Petroleum products and crudes.

(7) Timber.

(8) Subsistence.

(Added P.L. 102–484, § 840(a)(1), Oct. 23, 1992, 106 Stat. 2466; amended P.L. 104–106, § 4321(b)(16), Feb. 10, 1996, 110 Stat. 673.)

§ 2410h. Acquisition fellowship program

(a) ESTABLISHMENT.—The Secretary of Defense shall establish and carry out an acquisition fellowship program in accordance with this section in order to enhance the ability of the Department of Defense to recruit employees who are highly qualified in fields of acquisition.

(b) NUMBER OF FELLOWSHIPS.—The Secretary of Defense may designate up to 25 prospective employees of the Department of Defense as acquisition fellows.

(c) ELIGIBILITY.—In order to be eligible for designation as an acquisition fellow, an employee—

(1) must complete at least 2 years of Federal Government service as an employee in an acquisition position in the Department of Defense; and

(2) must be serving in an acquisition position in the Department of Defense that involves the performance of duties likely to result in significant restrictions under law on the employment activities of that employee after leaving Government service.

(d) TWO-YEAR PERIOD OF RESEARCH AND TEACHING.—Under the fellowship program, the Secretary of Defense shall pay designated acquisition fellows to engage in research or teaching for a 2-year period in a field related to Federal Government acquisition policy. Such research or teaching may be conducted in the defense acquisition university structure of the Department of Defense, any other institution of professional education of the Federal Government, or a nonprofit institution of higher education. Each fellow shall be paid at a rate equal to the rate of pay payable for the level of the position in which the fellow served in the Department of Defense before undertaking such research or teaching.

(Added P.L. 102–484, § 841(a), Oct. 23, 1992, 106 Stat. 2468.)

§ 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)), 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 small purchase threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))) 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 P.L. 102–484, § 1332(a), Oct. 23, 1992, 106 Stat. 2555.)

§ 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).

(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 P.L. 102–484, § 4443(a), Oct. 23, 1992, 106 Stat. 2732; amended P.L. 103–35, § 201(b)(1)(A), (g)(6), May 31, 1993, 107 Stat. 97, 100; P.L. 103–160, § 1331(c)(3), Nov. 30, 1993, 107 Stat. 1792; P.L. 103–382, § 391(b)(5), Oct. 20, 1994, 108 Stat. 4022; P.L. 104–106, § 1503(a)(23), Feb. 10, 1996, 110 Stat. 512; P.L. 104–201, § 576(c), Sept. 23, 1996, 110 Stat. 2535; P.L. 106–398, § 1[1087(a)(14)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291.)

§ 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 as § 2410d P.L. 102–484, § 4470(a), Oct. 23, 1992, 106 Stat. 2753; redesignated § 2410k and amended P.L. 103–35, § 201(b)(1)(A), May 31, 1993, 107 Stat. 97.)

§ 2410l. Contracts for advisory and assistance services: cost comparison studies [6]

(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 P.L. 103–337, § 363(a)(1), Oct. 5, 1994, 108 Stat. 2733.)

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[6] Section 363(b) of the National Defense Authorization Act for Fiscal Year 1995 (P.L. 103–337; 108 Stat. 2734) provides:

(b) PROCEDURES FOR CONDUCT OF STUDIES.—The Secretary of Defense shall prescribe the following procedures:

(1) Procedures for carrying out a cost comparison study under subsection (a)(2) of section 2410l 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 the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.), 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 7 of such Act (41 U.S.C. 606); 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 10(a) of the Contract Disputes Act of 1978 (41 U.S.C. 609(a)) if, within that 180-day period—

(i) no appeal on the claim is commenced at the Armed Services Board of Contract Appeals under section 7 of such Act; 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 7 of the Contract Disputes Act of 1978 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.

(c) REPORTING REQUIREMENT.—Each year, the Under Secretary of Defense (Comptroller) shall submit to Congress a report on the amounts, if any, that are available for obligation pursuant to this section. The report shall include, at a minimum, the following:

(1) The total amount available for obligation.

(2) The total amount collected from contractors during the year preceding the year in which the report is submitted.

(3) The total amount disbursed in such preceding year and a description of the purpose for each disbursement.

(4) The total amount returned to the Treasury in such preceding year.

(Added P.L. 105–85, § 831(a), Nov. 18, 1997, 111 Stat. 1841.)

CHAPTER 142—PROCUREMENT TECHNICAL ASSISTANCE COOPERATIVE AGREEMENT PROGRAM

Sec.
2411. Definitions.
2412. Purposes.
2413. Cooperative agreements.
2414. Limitation.
2415. Distribution.
2416. Subcontractor information.
2417. Administrative costs.
2418. Authority to provide certain types of technical assistance.
2419. Regulations.

§ 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 P.L. 98–525, § 1241(a)(1), Oct. 19, 1984, 98 Stat. 2605; amended P.L. 99–145, § 919(a), Nov. 8, 1985, 99 Stat. 692; revised in its entirety by identical amendments P.L. 99–500, 99–591, 99–661, §§ 101(c) [§ 956(a)], 101(c) [§ 956(a)], 956(a), Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–174, 3341–174, 3954; amended P.L. 100–180, § 807(b), Dec. 4, 1987, 101 Stat. 1128; P.L. 100–456, § 841(b)(2), Sept. 29, 1988, 102 Stat. 2025; P.L. 101–189, § 853(e), Nov. 29, 1989, 103 Stat. 1519; P.L. 102–25, § 701(j)(5), April 6, 1991, 105 Stat. 116; P.L. 102–484, § 1052(31), Oct. 23, 1992, 106 Stat. 2501.)

§ 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 P.L. 98–525, § 1241(a)(1), Oct. 19, 1984, 98 Stat. 2605; amended P.L. 99–145, § 919(a), Nov. 8, 1985, 99 Stat. 692.)

§ 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 one-half of the eligible entity's cost of furnishing such assistance under such programs, except that 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 one-half, but not more than three-fourths, of such cost with respect to such program.

(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.

(Added P.L. 98–525, § 1241(a), Oct. 19, 1984, 98 Stat. 2605; amended P.L. 99–145, § 919(a), Nov. 8, 1985, 99 Stat. 692; amended identically P.L. 99–500, 99–591, 99–600, §§ 101(c) [§ 956(b)], 101(c) [§ 956(b)], 956(b), Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–174, 3341–174, 3954; P.L. 105–261, § 802(a)(1), Oct. 17, 1998, 112 Stat. 2081.)

§ 2414. Limitation

(a) IN GENERAL.—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), $300,000;

(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), $150,000;

(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, $150,000; 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, $300,000.

(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.

(Added P.L. 98–525, § 1241(a), Oct. 19, 1984, 98 Stat. 2605; amended P.L. 99–145, § 919(a), Nov. 8, 1985, 99 Stat. 692; revised in its entirety P.L. 100–456, § 841(a), Sept. 29, 1988, 102 Stat. 2025; amended P.L. 101–189, § 819(c), Nov. 29, 1989, 103 Stat. 1503; P.L. 102–25, § 701(f)(7), April 6, 1991, 105 Stat. 115.)

§ 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 P.L. 98–525, § 1241(a), Oct. 19, 1984, 98 Stat. 2605; amended P.L. 99–145, § 919(b), Nov. 8, 1985, 99 Stat. 692; P.L. 100–180, § 807(c), Dec. 4, 1987, 101 Stat. 1128; P.L. 105–261, § 802(a)(2), (b), Oct. 17, 1998, 112 Stat. 2081.)

§ 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 $500,000.

(Added by identical amendments P.L. 99–500, 99–591, 99–661, §§ 101(c) [§ 957(a)(1)], 101(c) [§ 957(a)(1)], 957(a)(1), Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–174, 3341–174, 3954 [former § 2416 redesignated § 2417].)

§ 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 P.L. 101–510, § 814(a)(1)(B), Nov. 5, 1990, 104 Stat. 1596.)

§ 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.

(Added P.L. 102–484, § 4236(a)(1)(B), Oct. 23, 1992, 106 Stat. 2691.)

§ 2419. Regulations

The Secretary of Defense shall prescribe regulations to carry out this chapter.

(Added as § 2416 P.L. 98–525, § 1241(a), Oct. 19, 1984, 98 Stat. 2605; redesignated § 2417 by identical amendments P.L. 99–500, 99–591, 99–661, §§ 101(c) [§ 957(a)(1)], 101(c) [§ 957(a)(1)], 957(a)(1), Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–174, 3341–174, 3954; redesignated § 2418 P.L. 101–510, § 813(a)(1)(A), Nov. 5, 1990, 104 Stat. 1596; redesignated § 2419 P.L. 102–484, § 4236(a)(1)(A), Oct. 23, 1992, 106 Stat. 2691.)

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.

§ 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.)

§ 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 P.L. 99–661, § 321(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 P.L. 101–189, § 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 $50,000.

(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 P.L. 101–189, § 324(a), Nov. 29, 1989, 103 Stat. 1414; amended P.L. 103–355, § 3066, Oct. 13, 1994, 108 Stat. 3337; P.L. 104–106, § 4321(b)(17), Feb. 10, 1996, 110 Stat. 673.)

CHAPTER 144—MAJOR DEFENSE ACQUISITION PROGRAMS

Sec.
2430. Major defense acquisition program defined.
2431. Weapons development and procurement schedules.
2432. Selected Acquisition Reports.
2433. Unit cost reports.
2434. Independent cost estimates; operational manpower requirements.
2435. Baseline description.
[2436–2439. Repealed.]
2440. Technology and Industrial Base Plans.

§ 2430. Major defense acquisition program defined [1]

(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 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.

(Added P.L. 100–26, § 7(b)(2), April 21, 1987, 101 Stat. 279; amended P.L. 102–484, § 817(b), Oct. 23, 1992, 106 Stat. 2455; P.L. 104–106, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 2431. Weapons development and procurement schedules [2]

(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 justifica-

[1] For provisions relating to the defense acquisition pilot program, see section 809 of the National Defense Authorization Act for Fiscal Year 1991 (P.L. 101–510) and section 5064 of the Federal Acquisition Streamlining Act of 1994 (P.L. 103–355).

[2] Section 231(a) of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 102–484; 105 Stat. 241) provides:

(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.

tion 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 as § 139 P.L. 93–155, § 803(a), Nov. 16, 1973, 87 Stat. 614; amended P.L. 94–106, § 805, Oct. 7, 1975, 89 Stat. 538; P.L. 96–513, § 511(5), Dec. 12, 1980, 94 Stat. 2920; P.L. 97–86, § 909(c), Dec. 1, 1981, 95 Stat. 1120; P.L. 97–258, § 3(b)(1), Sept. 13, 1982, 96 Stat. 1063; P.L. 98–525, § 1405(3), Oct. 19, 1984, 98 Stat. 2621; transferred, and renumbered as § 2431, and amended P.L. 99–433, § 110(d)(12), (g)(6), Oct. 1, 1986, 100 Stat. 1003, 1004; amended P.L. 101–510, §§ 1301(13), 1484(f)(3), Nov. 5, 1990, 104 Stat. 1668, 1717; P.L. 103–355, § 3001, Oct. 13, 1994, 108 Stat. 3327; P.L. 104–106, § 4321(b)(18), Feb. 10, 1996, 110 Stat. 673.)

§ 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; 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 engineering and manufacturing development;

(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) 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;

(C) the current procurement 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

(D) 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 included in the report that is in the engineering and manufacturing development 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.

(4) The current procurement cost for the program.

(5) The current procurement unit cost for 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 major contracts under the program and the reasons for any cost or schedule variances under those contracts since the last Selected Acquisition Report.

(8) Program highlights since the last Selected Acquisition Report.

(f) Each comprehensive annual Selected Acquisition Report shall be submitted within 60 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 shall cease to apply after 90 percent of the items to be delivered to the United States under the program (shown as the total quantity of items to be purchased under the program in the most recent Selected Acquisition Report) have been delivered or 90 percent of planned expenditures under the program 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 and the Secretary of Defense has decided to proceed to engineering and manufacturing development 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 engineering and manufacturing development 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 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 as § 139a P.L. 97–252, § 1107(a)(1), Sept. 8, 1982, 96 Stat. 739; amended P.L. 98–525, § 1242(a), Oct. 19, 1984, 98 Stat. 2606; P.L. 99–145, § 1201, 99 Stat. 715; transferred, redesignated § 2432, and amended P.L. 99–433, § 110 (d)(13), (g)(7), Oct. 1, 1986, 100 Stat. 1003, 1004; amended identically P.L. 99–500, 99–591, 99–661, §§ 101(c) [§ 961(a)], 101(a) [§ 961(a)], 961(a), Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–175, 3341–175, 3955; amended P.L. 100–26, § 7 (b)(3), (k)(2), April 21, 1987, 101 Stat. 279, 284; P.L. 101–189, § 811(c), Nov. 29, 1989, 103 Stat. 1493; P.L. 101–510, §§ 1407, 1484(f)(4), Nov. 5, 1990, 104 Stat. 1681, 1717; P.L. 102–25, § 701(f)(3), April 6, 1991, 105 Stat. 115; P.L. 102–190, §§ 801(b)(2), 1061(a)(14), Dec. 5, 1991, 105 Stat. 1412, 1473; P.L. 102–484, § 817(c), Oct. 23, 1992, 106 Stat. 2455; P.L. 103–355, § 3002(a)(1), (b)–(h), Oct. 13, 1994, 108 Stat. 3328; P.L. 104–106, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; P.L. 104–201, § 806, Sept. 23, 1996, 110 Stat. 2606; P.L. 105–85, § 841(c), Nov. 18, 1997, 111 Stat. 1843; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 2433. Unit cost reports

(a) In this section:

(1) 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, means the cost estimate included in the baseline description for the program 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.

(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. 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.

(2) In the case of a procurement program, the procurement unit cost.

(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.

(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—

(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;

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, the service acquisition executive shall determine whether the current program acquisition unit cost for the program has increased 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.

(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 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 has increased 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.

(3) If, based upon the service acquisition executive's determination, the Secretary concerned determines that the current program acquisition unit cost has increased by at least 15 percent, or by at least 25 percent, as determined under paragraph (1) or that the procurement unit cost has increased by at least 15 percent, or by at least 25 percent, as determined under paragraph (2), the Secretary shall notify Congress in writing of such determination and of the increase with respect to such 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.

(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 has increased by at least 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 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 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 required to file a Selected Acquisition Report under subparagraph (A) but shall include the information described in subsection (g) regarding that program in the comprehensive annual Selected Acquisition Report submitted in that quarter.

(2) If the percentage increase in the program acquisition unit cost or procurement unit cost of a major defense acquisition program (as determined by the Secretary under subsection (d)) exceeds 25 percent, 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—

(i) such acquisition program is essential to the national security;

(ii) there are no alternatives to such acquisition program which will provide equal or greater military capability at less cost;

(iii) the new estimates of the program acquisition unit cost or procurement unit cost are reasonable; and

(iv) the management structure for the acquisition program is adequate to manage and control program acquisition unit cost or procurement unit cost; and

(B) if a report under paragraph (1) has been previously submitted to Congress with respect to such program for the current fiscal year but was based upon a different unit cost report from the program manager to the service acquisition executive designated by the Secretary concerned, a further report containing the information described in subsection (g), determined from the time of the previous report to the time of the current report.

(3) If a determination of an increase of at least 15 percent 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 of at least 25 percent 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 obliga-

tion 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 of at least 15 percent (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 of at least 25 percent (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 as shown in the Selected Acquisition Report in which the program was first included, expressed in constant base-year dollars and in current dollars.

(E) The current program acquisition cost 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.

(G) The completion status of the program (i) 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 (ii) 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.

(H) The fiscal year in which information on 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 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, 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, stated both in constant base-year dollars and in current dollars

and the procurement unit cost 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.

(P) The following contract performance assessment information with respect to each major contract under the program:

(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, contributing to the changes identified and a discussion of the effect these occurrences will have on future program costs and the program schedule.

(2) If a program acquisition unit cost increase or a procurement unit cost increase for a major defense acquisition program that results in a report under this subsection is due to termination or cancellation of the entire program, 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.

(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 as § 139b P.L. 97–252, § 1107(a)(1), Sept. 8, 1982, 96 Stat. 741; amended P.L. 98–94, § 1268(1), Sept. 24, 1983, 97 Stat. 705; P.L. 98–525, § 1242(b), Oct. 19, 1984, 98 Stat. 2607; P.L. 99–145, § 1303(a)(1), Nov. 8, 1985, 99 Stat. 738; transferred, redesignated § 2433, and amended P.L. 99–433, § 110 (d)(14), (g)(8), Oct. 1, 1986, 100 Stat. 1003, 1004; amended identically P.L. 99–500, 99–591, 99–661, §§ 101(c) [§ 961(b)], 101(c) [§ 961(b)], 961(b), Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–176, 3341–176, 3956; amended P.L. 100–26, § 7 (b)(4), (k)(3), April 21, 1987, 101 Stat. 279, 284; P.L. 101–189, § 811(a), Nov. 29, 1989, 103 Stat. 1490; P.L. 101–510, § 1484(k)(10), Nov. 5, 1990, 104 Stat. 1719; P.L. 102–484, § 817(d), Oct. 23, 1992, 106 Stat. 2456; P.L. 103–35, § 201(i)(2), May 31, 1993, 107 Stat. 100; P.L. 103–355, § 3002(a)(2), 3003, Oct. 13, 1994, 108 Stat. 3328, 3329; P.L. 105–85, § 833, Nov. 18, 1997, 111 Stat. 1842.)

§ 2434. Independent cost estimates; operational manpower requirements

(a) REQUIREMENT FOR APPROVAL.—The Secretary of Defense may not approve the engineering and manufacturing development, or the production and deployment, of a major defense acquisition program unless an independent estimate of the full life-cycle cost of the program and a manpower estimate for the program have been considered by the Secretary.

(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—

(1) that the independent estimate of the full life-cycle cost of a program—

(A) 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

(B) include all costs of development, procurement, military construction, and operations and support, without regard to funding source or management control; and

(2) 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).

(Added as § 139c P.L. 98–94, § 1203(a)(1), Sept. 24, 1983, 97 Stat. 682; transferred, redesignated § 2434, and amended P.L. 99–433, § 110(d)(15), (g)(9), Oct. 1, 1986, 100 Stat. 1003, 1004; amended P.L. 99–661, § 1208, Nov. 14, 1986, 100 Stat. 3975; P.L. 100–26, § 7(b)(5), April 21, 1987, 101 Stat. 279; P.L. 100–456, § 525(3), Sept. 29, 1988, 102 Stat. 1975; P.L. 102–190, § 801(a), (b)(1), Dec. 5, 1991, 105 Stat. 1412; P.L. 103–355, § 3004, Oct. 13, 1994, 108 Stat. 3330; P.L. 104–106, § 814, Feb. 10, 1996, 110 Stat. 395.)

§ 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 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.

(b) FUNDING LIMIT.—No amount appropriated or otherwise made available to the Department of Defense for carrying out a major defense acquisition program may be obligated after the program enters engineering and manufacturing development without

an approved baseline description unless such obligation is specifically approved by the Under Secretary of Defense for Acquisition and Technology.

(c) SCHEDULE.—A baseline description for a major defense acquisition program shall be prepared under this section—

(1) before the program enters demonstration and validation;

(2) before the program enters engineering and manufacturing development; and

(3) before the program enters production and deployment.

(d) 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 and Technology by the program manager for a program for which there is an approved baseline description under this section of reports of deviations from the baseline of the cost, schedule, performance, supportability, or any other factor of the program.

(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 by identical amendments P.L. 99–500, 99–591, 99–661, §§ 101(c) [§ 904(a)], 101(c) [§ 904(a)], 904(a), Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–133, 3341–133, 3912; amended P.L. 100–26, § 7(b)(6), April 21, 1987, 101 Stat. 280; P.L. 100–180, § 803(b), Dec. 4, 1987, 101 Stat. 1125; P.L. 100–370, § 1(i)(1), July 19, 1988, 102 Stat. 848; P.L. 101–189, § 811(b), Nov. 29, 1989, 103 Stat. 1493; P.L. 101–510, §§ 1207(b), 1484(k)(11), Nov. 5, 1990, 104 Stat. 1665, 1719 ; P.L. 103–160, § 904(d), Nov. 30, 1993, 107 Stat. 1728, revised in its entirety P.L. 103–355, § 3005(a), Oct. 13, 1994, 108 Stat. 3330.)

[§§ 2436 and 2437. Repealed. P.L. 103–160, § 821(a)(5), Nov. 30, 1993, 107 Stat. 1704]

[§ 2438 and 2439. Repealed. P.L. 103–355, §§ 3006(a), 3007(a), Oct. 13, 1994, 108 Stat. 3331]

§ 2440. Technology and Industrial Base Plans

The Secretary of Defense shall prescribe regulations requiring consideration of the national technology and industrial base in the development and implementation of acquisition plans for each major defense acquisition program.

(Added P.L. 102–484, § 4216(b), Oct. 23, 1992, 106 Stat. 2669.)

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.

§ 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.

(Aug. 10, 1956, ch. 1041, 70A Stat. 138; Sept. 2, 1958, P.L. 85–861, § 33(a)(13), 72 Stat. 1565.)

§ 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 De-

fense 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.)

§ 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.)

§ 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.)

[§ 2455. Repealed. P.L. 101–510, § 1322(a)(9), Nov. 5, 1990, 104 Stat. 1671]

§ 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.)

§ 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 armanents collaboration among all European members of the Organization.

(d) Before February 1, 1989, and biennially thereafter, the Secretary shall submit a report to Congress that includes—

(1) each specific assessment and evaluation made and the results of each assessment and evaluation, and the results achieved with the members of the North Atlantic Treaty Organization, under subsections (a) (1) and (2) and (b);

(2) procurement action initiated on each new major system not complying with the policy of subsection (a);

(3) procurement action initiated on each new major system that is not standardized or interoperable with equipment of other members of the Organization, including a description of the system chosen and the reason for choosing that system;

(4) the identity of—

(A) each program of research and development for the armed forces of the United States stationed in Europe that supports, conforms, or both, to common Organization requirements of developing weapon systems for use by the Organization, including a common definition of the military threat to the Organization; and

(B) the common requirements of the Organization to which those programs conform or which they support;

(5) action of the Alliance toward common Organization requirements if none exist;

(6) efforts to establish a regular procedure and mechanism in the Organization to determine common military requirements;

(7) a description of each existing and planned program of the Department of Defense that supports the development or procurement of a weapon system or other military equipment originally developed or procured by members of the Organization other than the United States and for which funds have been authorized to be appropriated for the fiscal year in which the report is submitted, including a summary listing of the amount of funds—

(A) appropriated for those programs for the fiscal year in which the report is submitted; and

(B) requested, or proposed to be requested, for those programs for each of the 2 fiscal years following the fiscal year for which the report is submitted; and

(8) a description of each weapon system or other military equipment originally developed or procured in the United States and that is being developed or procured by members of the Organization other than the United States during the fiscal year for which the report is submitted.

(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 2 of the Buy American Act (41 U.S.C. 10a) 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 P.L. 97–295, § 1(30)(A), Oct. 12, 1982, 96 Stat. 1294; amended P.L. 101–510, § 1311(5), Nov. 5, 1990, 104 Stat. 1670; P.L. 104–106, § 1503(a)(24), Feb. 10, 1996, 110 Stat. 512.)

§ 2458. Inventory management policies [1]

(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 prac-

[1] Section 395 of the National Defense Authorization Act for Fiscal Year 1998 (P.L. 105–85; 111 Stat. 1718) provides:

SEC. 395. INVENTORY MANAGEMENT.

(a) DEVELOPMENT AND SUBMISSION OF SCHEDULE.—Not later than 180 days after [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 [Nov. 18, 1997].

(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) [Obsolete report requirement omitted.]

tices and achieve cost savings in the acquisition and management of inventory items.

(Added P.L. 101–510, § 323(a)(1), Nov. 5, 1990, 104 Stat. 1530; amended P.L. 102–190, § 347(a), Dec. 5, 1991, 105 Stat. 1347.)

CHAPTER 146—CONTRACTING FOR PERFORMANCE OF CIVILIAN COMMERCIAL OR INDUSTRIAL TYPE FUNCTIONS

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§ 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 of an aircraft carrier. 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 P.L. 105–85, § 355(a), Nov. 18, 1997, 111 Stat. 1693; amended P.L. 105–261, § 341, Oct. 17, 1998, 112 Stat. 1973.)

§ 2461. Commercial or industrial type functions: required studies and reports before conversion to contractor performance

(a) REPORTING AND ANALYSIS REQUIREMENTS AS PRECONDITION TO CHANGE IN PERFORMANCE.—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).

(b) NOTIFICATION AND ELEMENTS OF ANALYSIS.—(1) Before commencing to analyze a commercial or industrial type function described in subsection (a) for possible change to performance by the private sector, the Secretary of Defense shall submit to Congress a report containing the following:

(A) The function to be analyzed for possible change.

(B) The location at which the function is performed by Department of Defense civilian employees.

(C) The number of civilian employee positions potentially affected.

(D) The anticipated length and cost of the analysis, and a specific identification of the budgetary line item from which funds will be used to cover the cost of the analysis.

(E) A certification that a proposed performance of the commercial or industrial type function by persons who are not civilian employees of the Department of Defense 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 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.

(3) An analysis of a commercial or industrial type function for possible change to performance by the private sector shall include the following:

(A) An examination of the cost of performance of the function by Department of Defense civilian employees and by one or more private contractors to demonstrate whether change to performance by the private sector will result in savings to the Government over the life of the contract, including in the examination the following:

(i) The cost to the Government, estimated by the Secretary of Defense (based on offers received), for performance of the function by the private sector.

(ii) The estimated cost to the Government of Department of Defense civilian employees performing the function.

(iii) In addition to the costs referred to in clause (i), an estimate of all other costs and expenditures that the Government would incur because of the award of such a contract.

(B) An examination of the potential economic effect of performance of the function by the private sector on the following:

(i) Employees of the Department of Defense who would be affected by such a change in performance.

(ii) The local community and the Government, if more than 50 employees of the Department of Defense perform the function.

(C) An examination of the effect of performance of the function by the private sector on the military mission associated with the performance of the function.

(4)(A) A representative individual or entity at a facility where a commercial or industrial type function is analyzed for possible change in performance may submit to the Secretary of Defense an objection to the analysis 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 analysis. 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 commercial or industrial type function covered by the analysis to which objected 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.

(c) NOTIFICATION OF DECISION.—(1) If, as a result of the completion of the examinations under subsection (b)(3), a decision is made to change the commercial or industrial type function that was the subject of the analysis to performance by the private sector, the Secretary of Defense shall submit to Congress a report describing that decision. The report shall contain the following:

(A) The date when the analysis of that commercial or industrial type function for possible change to performance by the private sector was commenced.

(B) An indication that the examinations required under subsection (b)(3) have been completed.

(C) The Secretary's certification that the Government calculation of the cost of performance of the function by Department of Defense civilian employees is based on an estimate of the most cost effective manner for performance of the function by Department of Defense civilian employees.

(D) The number of Department of Defense civilian employees who were performing the function when the analysis was commenced, the number of such employees whose employment was terminated or otherwise affected in implementing the most efficient organization of the function, and the number of such employees whose employment would be terminated or otherwise affected by changing to performance of the function by the private sector.

(E) The Secretary's certification that the factors considered in the examinations performed under subsection (b)(3), and in the making of the decision to change performance, did not include any predetermined personnel constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees.

(F) The Secretary's certification that the examination required by subsection (b)(3)(A) as part of the analysis demonstrates that the performance of the function by the private sector will result in savings to the Government over the life of the contract.

(G) A statement of the potential economic effect of the change on each affected local community, as determined in the examination under subsection (b)(3)(B)(ii).

(H) The Secretary's certification that the entire analysis is available for examination.

(I) A schedule for completing the change to performance of the function by the private sector.

(2) If the commercial or industrial type function to be changed to performance by the private sector is performed at a Center of Industrial and Technical Excellence designated under section 2474(a) of this title or an Army ammunition plant—

(A) the report required by this subsection shall also include a description of the effect that the performance and administration of the resulting contract will have on the overhead costs of the center or ammunition plant, as the case may be; and

(B) notwithstanding paragraph (3), the change of the function to contractor performance may not begin until at least 60 days after the submission of the report.

(3) The change of the function to contractor performance may not begin until after the submission of the report required by this subsection.

(d) WAIVER FOR SMALL FUNCTIONS.—Subsections (a) through (c) and subsection (g) shall not apply to a commercial or industrial type function of the Department of Defense that is being performed by 50 or fewer Department of Defense civilian employees.

(e) WAIVER FOR THE PURCHASE OF PRODUCTS AND SERVICES OF THE BLIND AND OTHER SEVERELY HANDICAPPED PERSONS.—Sub-

sections (a) through (c) and subsection (g) 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 2 of the Javits-Wagner-O'Day Act (41 U.S.C. 47); 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 that Act.

(f) ADDITIONAL LIMITATIONS.—(1) A commercial or industrial type function of the Department of Defense that on October 1, 1980, was being performed by Department of Defense civilian employees may not be changed to performance by a private contractor to circumvent a civilian personnel ceiling.

(2) In no case may a commercial or industrial type function being performed by Department of Defense personnel be modified, reorganized, divided, or in any way changed for the purpose of exempting from the requirements of subsection (a) the change of all or any part of such function to performance by a private contractor. [1]

(g) ANNUAL REPORTS.—Not later than February 1 of each fiscal year, the Secretary of Defense shall submit to Congress a written report describing the extent to which commercial and industrial type functions were performed by Department of Defense contractors during the preceding fiscal year. The Secretary shall include in each such report an estimate of the percentage of commercial and industrial type functions of the Department of Defense that will be performed by Department of Defense civilian employees, and the percentage of such functions that will be performed by private contractors, during the fiscal year during which the report is submitted.

(h) 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 P.L. 100–370, § 2(a)(1), July 19, 1988, 102 Stat. 851; amended P.L. 101–189, § 1132, Nov. 29, 1989, 103 Stat. 1561; P.L. 104–106, § 4321(b)(19), Feb. 10, 1996, 110 Stat. 673; P.L. 105–85, § 384(a), Nov. 18, 1997, 111 Stat. 1711; P.L. 105–261, § 342(a)–(c), Oct. 17, 1998, 112 Stat. 1974–1976; P.L. 106–65, § 341, Oct. 5, 1999, 113 Stat. 568; P.L. 106–398, § 1[351, 352], Oct. 30, 2000, 114 Stat. 1654, 1654A–71, 1654A–72.)

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[1] Section 8014 of the Department of Defense Appropriations Act, 2001 (P.L. 106–259; 114 Stat. 677), provides:

SEC. 8014. None of the funds appropriated by this Act shall be available to convert to contractor performance an activity or function of the Department of Defense that, on or after [Aug. 9, 2000], is performed by more than 10 Department of Defense civilian employees until a most efficient and cost-effective organization analysis is completed on such activity or function and certification of the analysis is made to the Committees on Appropriations of the House of Representatives and the Senate: *Provided*, That this section and subsections (a), (b), and (c) of 10 U.S.C. 2461 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 2 of the Act of June 25, 1938 (41 U.S.C. 47), popularly referred to as the Javits-Wagner-O'Day Act; (2) is planned to be converted to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely handicapped individuals in accordance with that Act; or (3) is planned to be converted to performance by a qualified firm under 51 percent ownership by an Indian tribe, as defined in section 450b(e) of title 25, United States Code, or a Native Hawaiian organization, as defined in section 637(a)(15) of title 15, United States Code.

§ 2461a. Development of system for monitoring cost savings resulting from workforce reductions

(a) WORKFORCE REVIEW DEFINED.—In this section, the term "workforce review", with respect to a function of the Department of Defense performed by Department of Defense civilian employees, means a review conducted under Office of Management and Budget Circular A–76 (or any successor administrative regulation or policy), the Strategic Sourcing Program Plan of Action (or any successor Department of Defense guidance or directive), or any other authority to determine whether the function—

(1) should be performed by a workforce composed of Department of Defense civilian employees or by a private sector workforce; or

(2) should be reorganized or otherwise reengineered to improve the effeciency or effectiveness of the performance of the function, with a resulting decrease in the number of Department of Defense civilian employees performing the function.

(b) SYSTEM FOR MONITORING PERFORMANCE.—(1) The Secretary of Defense shall establish a system for monitoring the performance, including the cost of performance, of each function of the Department of Defense that, after the date of the enactment of this section, is the subject of a workforce review.

(2) The monitoring system shall be designed to compare the following:

(A) The costs to perform a function before the workforce review to the costs actually incurred to perform the function after implementing the conversion, reorganization, or reengineering actions recommended by the workforce review.

(B) The anticipated savings to the actual savings, if any, resulting from conversion, reorganization, or reengineering actions undertaken in response to the workforce review.

(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.

(c) WAIVER FOR CERTAIN WORKFORCE REVIEWS.—Subsection (b) shall not apply to a workforce review that would result in a manpower reduction affecting fewer than 50 Department of Defense civilian employees.

(d) ANNUAL REPORT.—Not later than February 1 of each fiscal year, the Secretary of Defense shall submit to Congress a report on the results of the monitoring performed under the system established under subsection (b). For each function subject to monitoring during the previous fiscal year, the report shall indicate the following:

(1) The cost of the workforce review.

(2) The cost of performing the function before the workforce review compared to the costs incurred after implementing the conversion, reorganization, or reengineering actions recommended by the workforce review.

(3) The actual savings derived from the implementation of the recommendations of the workforce review, if any, compared to the anticipated savings that were to result from the conversion, reorganization, or reengineering actions.

(e) 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 workforce reviews. The Secretary shall consider the results of the monitoring under this section in making the estimates.

(Added P.L. 106–398, § 1[354(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–73.)

§ 2462. Contracting for certain supplies and services required when cost is lower

(a) IN GENERAL.—Except as otherwise provided by law, the Secretary of Defense shall procure each supply or service 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) from a source in the private sector if such a source can provide such supply or service to the Department at a cost that is lower (after including any cost differential required by law, Executive order, or regulation) than the cost at which the Department can provide the same supply or service.

(b) REALISTIC AND FAIR COST COMPARISONS.—For the purpose of determining whether to contract with a source in the private sector for the performance of a Department of Defense function on the basis of a comparison of the costs of procuring supplies or services from such a source with the costs of providing the same supplies or services by the Department of Defense, the Secretary of Defense shall ensure that all costs considered (including the costs of quality assurance, technical monitoring of the performance of such function, liability insurance, employee retirement and disability benefits, and all other overhead costs) are realistic and fair.

(Added P.L. 100–370, § 2(a)(1), July 19, 1988, 102 Stat. 853.)

§ 2463. Collection and retention of cost information data on converted services and functions

(a) REQUIREMENTS IN CONNECTION WITH CONVERSION TO CONTRACTOR PERFORMANCE.—With respect to each contract converting the performance of a service or function of the Department of Defense to contractor performance (and any extension of such a contract), the Secretary of Defense shall collect, during the term of the contract or extension, but not to exceed five years, cost information data regarding performance of the service or function by private contractor employees.

(b) REQUIREMENTS IN CONNECTION WITH RETURN TO EMPLOYEE PERFORMANCE.—Whenever the performance of a commercial or industrial type activity of the Department of Defense that is being performed by 50 or more employees of a private contractor is changed to performance by civilian employees of the Department of Defense, the Secretary of Defense shall collect, for a five-year period, cost information data comparing—

(1) the estimated costs of continued performance of such activity by private contractor employees; and

(2) the costs of performance of such activity by civilian employees of the Department of Defense.

(c) RETENTION OF INFORMATION.—With regard to the conversion to or from contractor performance of a particular service or function of the Department of Defense, the Secretary of Defense shall provide for the retention of information collected under this section for at least a 10-year period beginning at the end of the final year in which the information is collected.

(Added P.L. 100–370, § 2(a)(1), July 19, 1988, 102 Stat. 853; amended P.L. 101–189, § 1622(c)(7), Nov. 29, 1989, 103 Stat. 1604; P.L. 101–510, § 1301(14), Nov. 5, 1990, 104 Stat. 1668; P.L. 105–85, § 385(a), Nov. 18, 1997, 111 Stat. 1712.)

§ 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.

(Added P.L. 100–370, § 2(a)(i), July 19, 1988, 102 Stat. 853; amended P.L. 101–189, § 1622(c)(7), Nov. 29, 1989, 103 Stat. 1604; P.L. 104–106, § 314, Feb. 10, 1996, 110 Stat. 251; P.L. 105–85, § 356(a), Nov. 18, 1997, 111 Stat. 1694; P.L. 105–261, § 343(a), Oct. 17, 1998, 112 Stat. 1976; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 2465. Prohibition on contracts for performance of fire-fighting 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 fire-fighting or security-guard functions at any military installation or facility.

(b) The prohibition in subsection (a) does not apply—

(1) to 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) to a contract to be carried out on a Government-owned but privately operated installation; or

(3) to a contract (or the renewal of a contract) for the performance of a function under contract on September 24, 1983.

(Added as § 2693 P.L. 99–661, § 1222(a), Nov. 14, 1986, 100 Stat. 3976; amended P.L. 100–180, § 1112(a), (b)(1), (2), Dec. 4, 1987, 101 Stat. 1147; transferred and redesignated § 2465 P.L. 100–370, § 2(b)(1), July 19, 1988, 102 Stat. 854; P.L. 104–106, § 1503(a)(25), Feb. 10, 1996, 110 Stat. 512.)

§ 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) Transferred to § 2472(a).]

(c) WAIVER OF LIMITATION.—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.

(d) EXCEPTION.—Subsection (a) shall not apply with respect to the Sacramento Army Depot, Sacramento, California.

(e) ANNUAL REPORTS.—(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 requirements 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.Q04

(Added P.L. 100–456, § 326(a), Sept. 29, 1988, 102 Stat. 1955; amended P.L. 101–189, § 313, Nov. 29, 1989, 103 Stat. 1412; P.L. 102–190, § 314(a), Dec. 5, 1991, 105 Stat. 1336; P.L. 102–484, § 352(a)–(c), Oct. 23, 1992, 106 Stat. 2378; P.L. 103–337, § 332, Oct. 5, 1994, 108 Stat. 2715; P.L. 104–106, §§ 311(f)(1), 312(b), Feb. 10, 1996, 110 Stat. 248, 250; P.L. 105–85, §§ 357, 358, Nov. 18, 1997, 111 Stat. 1695; P.L. 106–65, § 333, Oct. 5, 1999, 113 Stat. 567.)

§ 2467. Cost comparisons: inclusion of retirement costs; consultation with employees; waiver of comparison

(a) REQUIREMENT TO INCLUDE RETIREMENT COSTS.—(1) In any comparison conducted by the Department of Defense under Office of Management and Budget Circular A–76 (or any successor administrative regulation or policy) of the cost of performing commercial activities by Department of Defense personnel and the cost of performing such activities by contractor personnel, the Secretary of Defense shall include retirement system costs (as described in paragraphs (2) and (3)) of both the Department of Defense and the contractor.

(2) The retirement system costs of the Department of Defense shall include (to the extent applicable) the following:

(A) The cost of the Federal Employees' Retirement System, valued by using the normal-cost percentage (as defined by section 8401(23) of title 5, United States Code).

(B) The cost of the Civil Service Retirement System under subchapter III of chapter 83 of such title 5.

(C) The cost of the thrift savings plan under subchapter III of chapter 84 of such title 5.

(D) The cost of the old age, survivors, and disability insurance taxes imposed under section 3111 (a) of the Internal Revenue Code of 1986.

(3) The retirement system costs of the contractor shall include the cost of the old age, survivors, and disability insurance taxes imposed under section 3111(a) of the Internal Revenue Code of 1986,

the cost of thrift or other retirement savings plans, and other relevant retirement costs.

(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 commercial activity of the Department—

(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, United States Code, 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).

(3) 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 paragraph (2)(B) for purposes of consultation required by paragraph (1).

(c) CONGRESSIONAL NOTIFICATION OF COST COMPARISON WAIVER.—(1) Not later than 10 days after a decision is made to waive the cost comparison study otherwise required under Office of Management and Budget Circular A–76 as part of the process to convert to contractor performance any commercial activity of the Department of Defense, the Secretary of Defense shall submit to Congress a report describing the commercial activity subject to the waiver and the rationale for the waiver.

(2) The report shall also include the following:

(A) The total number of civilian employees or military personnel currently performing the function to be converted to contractor performance.

(B) A description of the competitive procedure used to award a contract for contractor performance of the commercial activity.

(C) The anticipated savings to result from the waiver and resulting conversion to contractor performance.

(Added P.L. 100–456, § 331(a), Sept. 29, 1988, 102 Stat. 1957; amended P.L. 106–65, § 342(a), (b)(1), Oct. 5, 1999, 113 Stat. 569.)

§ 2468. Military installations: authority of base commanders over contracting for commercial activities

(a) AUTHORITY OF BASE COMMANDER.—The Secretary of Defense shall direct that the commander of each military installation

shall have the authority and the responsibility to enter into contracts in accordance with this section for the performance of a commercial activity on the military installation.

(b) YEARLY DUTIES OF BASE COMMANDER.—To enter into a contract under subsection (a) for a fiscal year, the commander of a military installation shall—

(1) prepare an inventory for that fiscal year of commercial activities carried out by Government personnel on the military installation;

(2) decide which commercial activities shall be reviewed under the procedures and requirements of Office of Management and Budget Circular A–76 (or any successor administrative regulation or policy); and

(3) conduct a solicitation for contracts for the performance of those commercial activities selected for conversion to contractor performance under the Circular A–76 process.

(c) LIMITATIONS.—(1) The Secretary of Defense shall prescribe regulations under which the commander of each military installation may exercise the authority and responsibility provided under subsection (a).

(2) The authority and responsibility provided under subsection (a) are subject to the authority, direction, and control of the Secretary.

(d) ASSISTANCE TO DISPLACED EMPLOYEES.—If the commander of a military installation enters into a contract under subsection (a), the commander shall, to the maximum extent practicable, assist in finding suitable employment for any employee of the Department of Defense who is displaced because of that contract.

(e) MILITARY INSTALLATION DEFINED.—In this section, 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 within the United States, the Commonwealth of Puerto Rico, or Guam.

(f) TERMINATION OF AUTHORITY.—The authority provided to commanders of military installations by subsection (a) shall terminate on September 30, 1995.

(Added P.L. 101–189, § 1131(a)(1), Nov. 29, 1989, 103 Stat. 1560; amended P.L. 101–510, § 921, Nov. 5, 1990, 104 Stat. 1627; P.L. 102–190, § 315(a), Dec. 5, 1991, 105 Stat. 1337; P.L. 103–160, § 370(c), Nov. 30, 1993, 107 Stat. 1634; P.L. 103–337, § 386(c), Oct. 5, 1994, 108 Stat. 2742.)

§ 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.—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) 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 P.L. 102–484, § 353(a), Oct. 23, 1992, 106 Stat. 2378; amended P.L. 103–160, § 346, Nov. 30, 1993, 107 Stat. 1625; P.L. 103–337, § 338, Oct. 5, 1994, 108 Stat. 2718; P.L. 105–85, § 335(b), Nov. 18, 1997, 111 Stat. 1694; P.L. 106–65, § 334, Oct. 5, 1999, 113 Stat. 568.)

§ 2469a. Use of competitive procedures in contracting for performance of depot-level maintenance and repair workloads formerly performed at certain military installations

(a) DEFINITIONS.—In this section:

(1) The term "closed or realigned military installation" means a military installation where a depot-level maintenance and repair facility was approved in 1995 for closure or 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).

(2) The term "military installation" includes a former military installation that was a military installation when it was approved in 1995 for closure or realignment under the Defense Base Closure and Realignment Act of 1990 and that has been closed or realigned under the Act.

(3) The terms "realignment" and "realigned" mean a decision under the Defense Base Closure and Realignment Act of 1990 that results in both a reduction and relocation of functions and civilian personnel positions.

(b) COVERED DEPOT-LEVEL MAINTENANCE AND REPAIR WORKLOADS.—Except as provided in subsection (c), this section applies with respect to any depot-level maintenance and repair workload that—

(1) was performed as of January 1, 1997, at a military installation that was approved in 1995 for closure or realignment under the Defense Base Closure and Realignment Act of 1990 and that has been closed or realigned under the Act; and

(2) is proposed to be converted from performance by Department of Defense personnel to performance by a private sector source.

(c) EXCEPTIONS.—This section shall not apply with respect to—

(1) a depot-level maintenance and repair workload that is to be consolidated to another military installation (other than a closed or realigned military installation) as a result of a base closure or realignment action or a decision made by the Secretary concerned or the Defense Depot Maintenance Council;

(2) a workload necessary to maintain a core logistics capability identified under section 2464 of this title; or

(3) any contract originally entered into before November 18, 1997.

(d) CONDITIONS AND SOLICITATION.—A solicitation of offers for the performance of any depot-level maintenance and repair workload described in subsection (b) may be issued, and a contract may be awarded pursuant to such a solicitation, only if the following conditions are met with respect to the contract and the solicitation specifically states the conditions:

(1) The source selection process used in the case of the solicitation and contract permits the consideration of offers submitted by private sector sources and offers submitted by public sector sources.

(2) The source selection process used in the case of the solicitation and contract requires that, in the comparison of offers, there be taken into account—

(A) the fair market value (or if fair market value cannot be determined, the estimated book value) of any land, plant, or equipment from a military installation that is proposed by a private offeror to be used to meet a specific workload (whether these assets are provided to the offeror by a local redevelopment authority or by any other source approved by an official of the Department of Defense); and

(B) the total estimated direct and indirect costs that will be incurred by the Department of Defense and the total estimated direct and indirect savings (including overhead) that will be derived by the Department of Defense.

(3) The cost standards used to determine the depreciation of facilities and equipment shall, to the maximum extent practicable, provide identical treatment to all public and private sector offerors.

(4) Any offeror, whether public or private, may offer to perform the workload at any location or locations selected by the offeror and to team with any other public or private entity to perform that workload at one or more locations, including a Center of Industrial and Technical Excellence designated under section 2474 of this title.

(5) No offeror may be given any preferential consideration for, or in any way be limited to, performing the workload in-place or at any other single location.

(e) CONTRACTS FOR MULTIPLE WORKLOADS.—(1) A solicitation may be issued for a single contract for the performance of multiple depot-level maintenance and repair workloads described in subsection (b) only if—

(A) the Secretary of Defense determines in writing that the individual workloads cannot as logically and economically be performed without combination by sources that are potentially qualified to submit an offer and to be awarded a contract to perform those individual workloads;

(B) the Secretary submits to Congress a report setting forth the determination together with the reasons for the determination; and

(C) the solicitation of offers for the contract is issued more than 60 days after the date on which the Secretary submits the report.

(2) The Comptroller General shall review each report submitted under paragraph (1)(B) and, not later than 30 days after the

report is submitted to Congress, shall submit to Congress the Comptroller General's views regarding the determination of the Secretary that is set forth in the report, together with any other findings that the Comptroller General considers appropriate.

(f) COMPETITIVE PROCEDURES REQUIRED.—Section 2304(c)(7) of this title shall not be used as the basis for an exception to the requirement to use competitive procedures for any contract for a depot-level maintenance and repair workload described in subsection (b).

(g) REVIEWS OF COMPETITIVE PROCEDURES.—If a solicitation of offers for a contract for, or award of, any depot-level maintenance and repair workload described in subsection (b) is issued, the Comptroller General shall—

(1) within 45 days after the issuance of the solicitation, review the solicitation and report to Congress on whether the solicitation—

(A) provides substantially equal opportunity for public and private offerors to compete for the contract without regard to the location at which the workload is to be performed; and

(B) is in compliance with the requirements of this section and all applicable provisions of law and regulations; and

(2) within 45 days after any contract or award resulting from the solicitation is entered into or made, review the contract or award, including the contracting or award process, and report to Congress on whether—

(A) the procedures used to conduct the competition—

(i) provided substantially equal opportunity for public and private offerors to compete for the contract without regard to the location at which the workload is to be performed; and

(ii) were in compliance with the requirements of this section and all applicable provisions of law and regulations;

(B) appropriate consideration was given to factors other than cost in the selection of the source for performance of the workload; and

(C) the contract or award resulted in the lowest total cost to the Department of Defense for performance of the workload.

(h) RESOLUTION OF WORKLOAD AWARD OBJECTIONS.—Any public or private entity may, pursuant to procedures established by the Secretary, object to a solicitation of offers under this section for the performance of any depot-level maintenance and repair workload, or the award or proposed award of any workload pursuant to such a solicitation. The Secretary may designate a qualified individual or entity to review the objection; however, the Secretary shall not designate the Source Selection Authority or any individual from the same military department as the Source Selection Authority to review the objection. The Secretary shall take appropriate action to address any defect in the solicitation or award in the event that the objection is sustained.

(i) OVERSIGHT OF CONTRACTS AWARDED PUBLIC ENTITIES.—The Secretary of Defense or the Secretary concerned may not impose on a public sector entity awarded a contract for the performance of any depot-level maintenance and repair workload described in subsection (b) any requirements regarding management systems, reviews, oversight, or reporting that are significantly different from the requirements used in the performance and management of other similar or identical depot-level maintenance and repair workloads by the entity, unless the requirements are specifically provided in the solicitation for the contract or are necessary to ensure compliance with the terms of the contract.

(Added P.L. 105–85, § 359(a)(1), Nov. 18, 1997, 111 Stat. 1696; amended P.L. 106–65, §§ 335, 1066(a)(20), Oct. 5, 1999, 113 Stat. 568, 771.)

§ 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 P.L. 103–337, § 335(a), Oct. 5, 1994, 108 Stat. 2716.)

[§ 2471. Repealed. P.L. 106–398, § 1[341(g)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–64]

§ 2472. Management of depot employees

(a) PROHIBITION ON MANAGEMENT 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.

(b) ANNUAL REPORT.—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.

(Added P.L. 104–106, § 312(a)–(b), Feb. 10, 1996, 110 Stat. 250; amended P.L. 105–85, § 360, Nov. 18, 1997, 111 Stat. 1700; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 2473. Procurements from the small arms production industrial base [2]

(a) REQUIREMENT TO LIMIT PROCUREMENTS TO CERTAIN SOURCES.—In order to preserve the small arms production industrial base, the Secretary of Defense shall require that any procurement of property or services described in subsection (b) for the Department of Defense be made only from a firm in the small arms production industrial base, unless the Secretary determines, with regard to a particular procurement, that such requirement is not necessary to preserve the small arms production industrial base.

(b) COVERED PROPERTY AND SERVICES.—Subject to subsection (d), subsection (a) applies to the following:

(1) Critical repair parts for small arms, consisting only of barrels, receivers, and bolts.

(2) Modifications of such parts to improve small arms used by the armed forces.

(c) SMALL ARMS PRODUCTION INDUSTRIAL BASE.—In this section, the term "small arms production industrial base" means the firms comprising the small arms production industrial base, as described in the plan entitled "Preservation of Critical Elements of the Small Arms Industrial Base", dated January 8, 1994, that was prepared by an independent assessment panel of the Army Science Board.

(d) APPLICABILITY.—This section applies only to procurements of covered property and services involving the following small arms:

(1) M16 series rifle.
(2) MK19 grenade machine gun.
(3) M4 series carbine.
(4) M240 series machine gun.
(5) M249 squad automatic weapon.

(e) SUBMISSION OF CERTIFIED COST OR PRICING DATA.—If a procurement under subsection (a) is a procurement of a commercial item, the Secretary may, notwithstanding section 2306a(b)(1)(B) of this title, require the submission of certified cost or pricing data under section 2306a(a) of this title.

(Added P.L. 104–201, § 832(a), Sept. 23, 1996, 110 Stat. 2616; amended P.L. 105–261, § 809(a)–(d), Oct. 17, 1998, 112 Stat. 2085, 2086; P.L. 106–65, § 815(b), Oct. 5, 1999, 113 Stat. 712.)

§ 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 of the military departments and the Defense Agencies (other than facilities approved for closure or major

[2] Subsections (e) and (f) of section 809 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (P.L. 105–261; 112 Stat. 2086) provide:

(e) STUDY.—Not later than 60 days after [Oct. 17, 1998], the Secretary of the Army shall conduct a study, to be carried out by the Army Science Board, to examine whether the requirements of section 2473 of title 10, United States Code, should be extended to small arms (as specified in subsection (d) of such section) and the parts manufactured under a contract with the Department of Defense to produce such small arms.

(f) AUTHORITY TO EXTEND REQUIREMENTS OF SECTION 2473.—Based upon recommendations of the Army Science Board resulting from the study conducted under subsection (e), the Secretary of the Army may apply the requirements of section 2473 of title 10, United States Code, to the small arms and parts referred to in subsection (e).

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(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.

(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 in a case of willful conduct or gross negligence; 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) 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 P.L. 105–85, § 361(a)(1), Nov. 18, 1997, 111 Stat. 1700; amended P.L. 106–398, § 1[341(a)–(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A–61.)

§ 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 P.L. 106–398, § 1[353(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–72.)

CHAPTER 147—COMMISSARIES AND EXCHANGES AND OTHER MORALE, WELFARE, AND RECREATION ACTIVITIES

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[Former § 2481 transferred to § 2686]

§ 2482. Commissary stores: operation [1]

(a) PRIVATE OPERATION.—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. Such functions shall be carried out by personnel of the Department of Defense under regulations approved by the Secretary of Defense.

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[1] Section 367 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (P.L. 105–261; 112 Stat. 1987) provides:

SEC. 367. PROHIBITION ON CONSOLIDATION OR OTHER ORGANIZATIONAL CHANGES OF DEPARTMENT OF DEFENSE RETAIL SYSTEMS.

(a) DEFENSE RETAIL SYSTEMS DEFINED.—For purposes of this section, the term "defense retail systems" means the defense commissary system and exchange stores and other revenue-generating facilities operated by nonappropriated fund activities of the Department of Defense for the morale, welfare, and recreation of members of the Armed Forces.

(b) PROHIBITION.—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 a law enacted after [Oct. 17, 1998].

(c) EFFECT ON EXISTING STUDY.—Nothing in this section shall be construed to prohibit the study of defense retail systems, known as the "Joint Exchange Due Diligence Study", which is underway on [Oct. 17, 1998] pursuant to a contract awarded by the Department of the Navy on April 21, 1998, except that any recommendation contained in the completed study regarding the operation or administration of the defense retail systems may not be implemented unless implementation of the recommendation is specifically authorized by a law enacted after [Oct. 17, 1998].

(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 4(6) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(6)).

(2) A commissary store operated by a nonappropriated fund instrumentality of the Department of Defense shall be operated in accordance with section 2484 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.

(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.

(Aug. 10, 1956, ch. 1041, 70A Stat. 141; Sept. 29, 1988, P.L. 100–456, § 321, 102 Stat. 1952; Feb. 10, 1996, P.L. 104–106, § 331(a), 110 Stat. 260; Sept. 23, 1996, P.L. 104–201, § 341(b), 110 Stat. 2489; P.L. 105–261, §§ 361(b), 363(a), Oct. 17, 1998, 112 Stat. 1984, 1985.)

§ 2482a. 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 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.

(Added P.L. 104–201, § 341(a)(1), Sept. 23, 1996, 110 Stat. 2488.)

[Former § 2483 transferred to § 2867]

§ 2484. Commissary stores: expenses [2]

(a) Except to the extent authorized in regulations prescribed by the Secretary of a military department and approved by the Secretary of Defense and except as provided in subsection (b), funds available to the Department of Defense may not be used to pay, in connection with the operation of any commissary store—

(1) the cost of purchases (including commercial transportation in the United States to the place of sale) and the cost of maintenance of operating equipment and supplies;

(2) the actual or estimated cost of utilities furnished by the United States;

(3) the actual or estimated cost of shrinkage, spoilage, and pilferage of merchandise under the control of the commissary store; or

(4) costs incurred in connection with obtaining the face value amount of manufacturer or vendor cents-off discount coupons by the commissary store (or other entity acting on behalf of the commissary store).

(b) Appropriated funds may be used to pay any costs described in subsection (a) but only to the extent that appropriation accounts used to pay such costs are reimbursed for the payment of such costs, including, in the case of any costs incurred in connection with discount coupons referred to in subsection (a)(4), all fees or moneys received for handling or processing such coupons. The sales prices in commissary stores shall be adjusted to the extent necessary to provide sufficient gross revenues from the sales of such stores to make such reimbursements. Such adjustments shall be made under regulations prescribed by the Secretary of the military department concerned and approved by the Secretary of Defense.

(c) Under regulations prescribed by the Secretary of Defense, utilities may be furnished without cost to a commissary store outside the United States or in Alaska or Hawaii.

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[2] Effective October 1, 2001, pursuant to section 331(a)(1) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654A–59), section 2484 is amended to read as follows:

§ 2484. 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 may be funded using such amounts as are appropriated for such purpose.

(b) OPERATING EXPENSES OF COMMISSARY STORES.—Appropriated funds may 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.

(d) Transportation outside the United States may be furnished in connection with the operation of commissary stores outside the United States.

(Added P.L. 98–525, § 1401(i), Oct. 19, 1984, 98 Stat. 269; amended in its entirety P.L. 106–398, § 1[331(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–59.)

§ 2485. Donation of unusable food: commissary stores and other activities

(a) The Secretary of Defense may donate food described in subsection (b) to entities specified under subsection (d).

(b) Food that may be donated under this section 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—

(1) is certified as edible by appropriate food inspection technicians;

(2) would otherwise be destroyed as unusable; and

(3) in the case of commissary store food, is unmarketable and unsaleable.

(c) In the case of commissary store food, a donation under this section shall take place at the site of the commissary that is donating the food.

(d) A donation under this section may only be made to an entity that is one of the following:

(1) 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.

(2) 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.

(3) 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.

(4) 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.

(e) This section does not authorize any service (including transportation) to be provided in connection with a donation under this section.

(Added P.L. 99–145, § 1460(a), Nov. 8, 1985, 99 Stat. 764; amended P.L. 101–510, § 324 (a) and (b), Nov. 5, 1990, 104 Stat. 1530, 1531; P.L. 104–201, § 365, Sept. 23, 1996, 110 Stat. 2494.)

§ 2486. Commissary stores: merchandise that may be sold; uniform surcharges and pricing[3]

(a) IN GENERAL.—Commissary stores are similar to commercial grocery stores and may sell merchandise similar to that sold in commercial grocery stores.

[3] Section 332 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654A–59), provides:

SEC. 332. ADJUSTMENT OF SALES PRICES OF COMMISSARY STORE GOODS AND SERVICES TO COVER CERTAIN EXPENSES.

(a) ADJUSTMENT REQUIRED.—Section 2486 of title 10, United States Code, is amended—

(b) AUTHORIZED COMMISSARY MERCHANDISE CATEGORIES.—Merchandise sold in, at, or by commissary stores may include items only in the following categories:

(1) Health and beauty aids.
(2) Meat and poultry.
(3) Fish and seafood.
(4) Produce.
(5) Food and non-food grocery items.
(6) Bakery goods.
(7) Dairy products.
(8) Tobacco products.
(9) Delicatessen items.
(10) Frozen foods.
(11) Magazines and other periodicals.
(12) Such other merchandise categories as the Secretary of Defense may prescribe, 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.

(c) UNIFORM SALES PRICE SURCHARGE OR ADJUSTMENT.—An adjustment of or surcharge on sales prices in commissary stores under section 2484(b) or 2685(a) of this title or for any other purpose shall be applied as a uniform percentage of the sales price of all merchandise sold in, at, or by commissary stores. Effective on November 18, 1997, the uniform percentage shall be equal to five percent and may not be changed except by a law enacted after such date.

(d) 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 (consistent with this section and sections 2484 and 2685 of this title).

(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

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(1) in subsection (c), by striking "section 2484(b) or" and inserting "subsection (d) or section"; and

(2) in subsection (d)—

(A) in paragraph (1), by striking "sections 2484 and" and inserting "section"; and

(B) by adding at the end the following new paragraph:

"(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.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2001.

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.

(e) SPECIAL RULE FOR BRAND-NAME COMMERCIAL ITEMS.—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.

(f) SPECIAL RULES FOR CERTAIN MERCHANDISE.—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. Subsections (c) and (d) shall not apply to the pricing of such merchandise items.

(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.

(Added P.L. 99–661, § 313(a), Nov. 14, 1986, 100 Stat. 3852; amended P.L. 100–180, § 313(a)(1), Dec. 4, 1987, 101 Stat. 1073; P.L. 104–201, § 342(a), Sept. 23, 1996, 110 Stat. 2489; P.L. 105–85, §§ 372(a)–(e), 373, Nov. 18, 1997, 111 Stat. 1706, 1707; P.L. 105–261, § 364, Oct. 17, 1998, 112 Stat. 1986; P.L. 106–65, § 1066(a)(21), Oct. 5, 1999, 113 Stat. 771; P.L. 106–398, § 1[332(a), 334], Oct. 30, 2000, 114 Stat. 1654, 1654A–59, 1654A–60.)

§ 2487. Commissary stores: limitations on release of sales information

(a) AUTHORITY TO LIMIT RELEASE.—(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 subsection (b).

(2) Paragraph (1) applies to those portions of computer data generated by electronic scanners used in military commissaries, and those portions of reports generated by such scanners, that contain the following information:

(A) The unit price of items sold.

(B) The number of units of items sold.

(b) RELEASE UNDER COMPETITIVELY AWARDED AGREEMENTS.—The Secretary of Defense may enter into one or more agreements that provide for limited release of information described in subsection (a)(2). The Secretary shall use competitive procedures to enter into each such agreement unless the agreement is between the Defense Commissary Agency and a manufacturer, distributor, or other vendor doing business with the Agency and is restricted to information directly related to merchandise provided by that manufacturer, distributor, or vendor. Each agreement shall require payment for such information and shall specify the amount of such payment.

(c) DEPOSIT OF RECEIPTS.—Amounts received by the United States under an agreement described in subsection (b) with respect to a commissary shall be deposited in the Commissary Trust Revolving Fund of the military department under which the commissary is operated.

(Added P.L. 99–661, § 313(a), Nov. 14, 1986, 100 Stat. 3852; amended P.L. 102–484, § 364(a)–(b)(1), Oct. 23, 1992, 106 Stat. 2381; P.L. 104–106, § 332, Feb. 10, 1996, 110 Stat. 260.)

§ 2488. Nonappropriated fund instrumentalities: purchase of alcoholic beverages [4]

(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

[4] Section 8108 of the Department of Defense Appropriations Act, 2001 (P.L. 106–259; 114 Stat. 698), provides:

SEC. 8108. None of the funds appropriated by this Act shall be used for the support of any nonappropriated funds activity of the Department of Defense that procures 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 are procured within that State, or in the case of the District of Columbia, within the District of Columbia, in which the military installation is located: *Provided*, That in a case in which the military installation is located in more than one State, purchases may be made in any State in which the installation is located: *Provided further*, That such local procurement requirements for malt beverages and wine shall apply to all alcoholic beverages only for military installations in States which are not contiguous with another State: *Provided further*, That alcoholic beverages other than wine and malt beverages, in contiguous States and the District of Columbia shall be procured from the most competitive source, price and other factors considered.

(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 P.L. 99–661, § 313(a), Nov. 14, 1986, 100 Stat. 3852; amended P.L. 100–180, § 312(a), Dec. 4, 1987, 101 Stat. 1073; P.L. 104–106, § 333, Feb. 10, 1996, 110 Stat. 261; P.L. 106–398, § 1[335], Oct. 30, 2000, 114 Stat. 1654, 1654A–61.)

§ 2489. 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 P.L. 100–180, § 311(a)(1), Dec. 4, 1987, 101 Stat. 1073.)

§ 2489a. 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) REGULATIONS.—The Secretary of Defense shall prescribe regulations to implement this section.

(d) 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 P.L. 104–201, § 343(a)(1), Sept. 23, 1996, 110 Stat. 2489.)

[Former § 2490 transferred to § 2868]

§ 2490a. 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) DEFINITIONS.—In this section:

(1) 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.

(2) The term "base closure law" has the meaning given such term by section 2667(h) of this title.

(Added P.L. 104–106, § 336(a)(1), Feb. 10, 1996, 110 Stat. 263; amended P.L. 105–85, § 1061(d), Nov. 18, 1997, 111 Stat. 1891.)

[Former § 2491 redesignated as § 2500]

§ 2492. Overseas commissary and exchange stores: access and purchase restrictions

(a) GENERAL AUTHORITY.—(1) 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).

(2) In establishing a quantity or other restriction, the Secretary—

(A) may not discriminate among the various categories of eligible patrons of the commissary and exchange system; and

(B) 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.

(b) CONTROLLED ITEM LISTS.—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.

(c) ANNUAL REPORT.—The Secretary of Defense shall submit to Congress an annual report describing the host nation laws and the treaty obligations of the United States, and the conditions within

host nations, that necessitate the use of quantity or other restrictions on purchases in commissary and exchange stores located outside the United States.

(Added P.L. 105–261, § 365, Oct. 17, 1998, 112 Stat. 1986; amended P.L. 106–65, § 1066(a)(22), Oct. 5, 1999, 113 Stat. 771.)

§ 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 patients of that health care facility, members of the families of such patients, and others providing the equivalent of familial support for such patients; 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 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.

(b) NONAPPROPRIATED FUND INSTRUMENTALITY.—The Secretary of each military department shall administer all Fisher Houses and Fisher Suites associated with health care 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 health care 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 health care facilities of that military department and shall be available to that Secretary to support all such Fisher Houses and Fisher Suites.

(f) SPECIAL AUTHORITY FOR NAVY.—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).[5]

(g) ANNUAL REPORT.—Not later than January 15 of each year, the Secretary of each military department shall submit to Congress a report describing the operation of Fisher Houses and Fisher Suites associated with health care facilities of that military department. The report shall include, at a minimum, the following:

(1) The amount in the fund established by that Secretary under subsection (d) as of October 1 of the previous year.

(2) The operation of the fund during the preceding fiscal year, including—

(A) all gifts, fees, and interest credited to the fund; and

(B) all disbursements from the fund.

(3) The budget for the operation of the Fisher Houses and Fisher Suites for the fiscal year in which the report is submitted.

(Added P.L. 105–261, § 906(a), Oct. 17, 1998, 112 Stat. 2093; amended P.L. 106–398, § 1[914(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–230.)

[5] Section 914(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654A–230) provides:

(b) SAVINGS PROVISIONS FOR CERTAIN NAVY EMPLOYEES.—(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.

CHAPTER 148—NATIONAL DEFENSE TECHNOLOGY AND INDUSTRIAL BASE, DEFENSE REINVESTMENT, AND DEFENSE CONVERSION

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SUBCHAPTER I—DEFINITIONS

Sec.
2500. Definitions.

§ 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, or maintenance 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, or production 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 crit-

ical technologies submitted to Congress by the President pursuant to section 603(d) 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 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, and manufacturing 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)).

(Added as § 2491 P.L. 102–484, § 4203(a), Oct. 23, 1992, 106 Stat. 2661; amended P.L. 103–160, §§ 1182(a)(9), 1315(f), Nov. 30, 1993, 107 Stat. 1771, 1788; P.L. 103–337, §§ 1113(d), 1115(e), Oct. 5, 1994, 108 Stat. 2866, 2869; P.L. 104–106, § 1081(h), Feb. 10, 1996, 110 Stat. 455; redesignated § 2500 and amended P.L. 105–85, §§ 371(b)(3), 1073(a)(53), Nov. 18, 1997, 111 Stat. 1705, 1903.)

SUBCHAPTER II—POLICIES AND PLANNING [1]

Sec.
2501. National security objectives concerning 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.

§ 2501. National security objectives concerning national technology and industrial base [2, 3]

(a) NATIONAL SECURITY OBJECTIVES FOR NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.—It is the policy of Congress

[1] For related provisions with respect to the shipbuilding industry, see the National Shipbuilding and Shipyard Conversion Act of 1993 (subtitle D of title XIII of P.L. 103–160).

[2] Section 1118 of the National Defense Authorization Act for Fiscal Year 1995 (P.L. 103–337; 108 Stat. 2870) provides:

SEC. 1118. DOCUMENTATION FOR AWARDS FOR COOPERATIVE AGREEMENTS OR OTHER TRANSACTIONS UNDER DEFENSE TECHNOLOGY REINVESTMENT PROGRAMS.

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 section 2501(b) of such title.

[3] Section 212 of the National Defense Authorization Act for Fiscal Year 2000 (P.L. 106–65; 113 Stat. 542) provides:

SEC. 212. SENSE OF CONGRESS REGARDING DEFENSE SCIENCE AND TECHNOLOGY PROGRAM.

(a) FAILURE TO COMPLY WITH FUNDING OBJECTIVE.—It is the sense of Congress that the Secretary of Defense has failed to comply with the funding objective for the Defense Science and Technology Program, especially the Air Force Science and Technology Program, as stated in section 214(a) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 1948), thus jeopardizing the stability of the defense technology base and increasing the risk of failure to maintain technological superiority in future weapon systems.

(b) FUNDING OBJECTIVE.—It is further the sense of Congress that, for each of the fiscal years 2001 through 2009, it should be an objective of the Secretary of Defense to increase the budget for the Defense Science and Technology Program, including the science and technology program within each military department, 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.

(c) CERTIFICATION.—If the proposed budget for a fiscal year covered by subsection (b) fails to comply with the objective set forth in that subsection—

(1) the Secretary of Defense shall submit to Congress—

(A) the certification of the Secretary that the budget does not jeopardize the stability of the defense technology base or increase the risk of failure to maintain technological superiority in future weapon systems; or

(B) a statement of the Secretary explaining why the Secretary is unable to submit such certification; and

Continued

that the national technology and industrial base be capable of meeting the following national security objectives:

(1) Supplying and equipping 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. 404a);

(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, and logistics for 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 and produce 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.

(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 P.L. 102–484, § 4211, Oct. 23, 1992, 106 Stat. 2662; amended P.L. 103–35, § 201(c)(7), May 31, 1993, 107 Stat. 98; P.L. 103–160, §§ 1182(a)(10), 1313, Nov. 30, 1993, 107 Stat. 1771, 1786; P.L. 104–106, § 1081(a), Feb. 10, 1996, 110 Stat. 452; P.L. 104–201, § 829(a), Sept. 23, 1996, 110 Stat. 2612.)

§ 2502. National Defense Technology and Industrial Base Council

(a) ESTABLISHMENT.—There is a National Defense Technology and Industrial Base Council.

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(2) the Defense Science Board shall, not more than 60 days after the date on which the Secretary submits the certification or statement under paragraph (1), submit to the Secretary and Congress a report assessing the effect such failure to comply is likely to have on defense technology and the national defense.

(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 P.L. 102–484, § 4212(a), Oct. 23, 1992, 106 Stat. 2664; amended P.L. 103–160, § 1312(b), Nov. 30, 1993, 107 Stat. 1786; P.L. 103–337, § 1070(a)(12), Oct. 5, 1994, 108 Stat. 2856; P.L. 104–106, § 1081(b), Feb. 10, 1996, 110 Stat. 452; P.L. 104–201, § 829(c)(2),(3) Sept. 23, 1996, 110 Stat. 2613 [P.L. 105–85, § 1073(c)(7), Nov. 18, 1997, 111 Stat. 1904].)

§ 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. 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 P.L. 102–484, § 4213(a), Oct. 23, 1992, 106 Stat. 2665; amended P.L. 104–201, § 829(b), Sept. 23, 1996, 110 Stat. 2612.)

§ 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 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.

(3) 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.

(4) Identification of each program designed to sustain specific essential technological and industrial capabilities and processes of the national technology and industrial base.

(Added P.L. 104–201, § 829(e), Sept. 23, 1996, 110 Stat. 2614; amended P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 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; and

(3) 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.

(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) 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 P.L. 102–484, § 4215, Oct. 23, 1992, 106 Stat. 2667; amended P.L. 103–35, § 201(g)(7), May 31, 1993, 107 Stat. 100; P.L. 104–201, § 829(c)(1), Sept. 23, 1996, 110 Stat. 2612.)

§ 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 budget allocation, weapons 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 P.L. 102–484, § 4216(a), Oct. 23, 1992, 106 Stat. 2668; amended P.L. 104–201, § 829(d), Sept. 23, 1996, 110 Stat. 2613.)

§ 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 section (a) which the President deems confidential or with reference to which a request for confidential treat-

ment 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 P.L. 102–484, § 4217, Oct. 23, 1992, 106 Stat. 2670; amended P.L. 103–160, § 1182(b), Nov. 30, 1993, 107 Stat. 1772.)

SUBCHAPTER III—PROGRAMS FOR DEVELOPMENT, APPLICATION, AND SUPPORT OF DUAL-USE TECHNOLOGIES

Sec.
2511. Defense dual-use critical technology program.
[2512. Repealed.]
[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.]

§ 2511. Defense dual-use critical technology program [4]

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense shall conduct a program to further the national security objectives

[4] Section 203 of the National Defense Authorization Act for Fiscal Year 1998 (P.L. 105–85; 111 Stat. 1655) provides:

SEC. 203. DUAL-USE SCIENCE AND TECHNOLOGY PROGRAM.

(a) [Obsolete funding provision omitted.]

(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

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

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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 and Technology.

(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 [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) [Obsolete report requirement ommitted].

(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) [Obsolete funding provision omitted.]

(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) [Provision repealing superseded authority omitted.]

(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.

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 P.L. 102–484, § 4221(a), Oct. 23, 1992, 106 Stat. 2677; amended P.L. 103–160, §§ 1315(a), 1317(c), Nov. 30, 1993, 107 Stat. 1787, 1789; P.L. 103–337, § 1115(a), Oct. 5, 1994, 108 Stat. 2868; amended in its entirety P.L. 104–106, § 1081(c), Feb. 10, 1996, 110 Stat. 452.)

[§§ 2512 and 2513. Repealed. P.L. 104–106, § 1081(f), Feb. 10, 1996, 110 Stat. 454]

§ 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 P.L. 102–484, § 4224(a), Oct. 23, 1992, 106 Stat. 2682; amended P.L. 104–201, § 829(f), Sept. 23, 1996, 110 Stat. 2614.)

§ 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.

(d) ANNUAL REPORT.—(1) 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 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 fiscal year preceding the fiscal year in which the report is submitted.

(2) 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.

(Added P.L. 102–484, § 4225(a), Oct. 23, 1992, 106 Stat. 2683; amended P.L. 104–106, § 1502(a)(22), Feb. 10, 1996, 110 Stat. 505; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

[§ 2516. Repealed. P.L. 104–106, § 1081(g), Feb. 10, 1996, 110 Stat. 455]

§ 2517. Office for Foreign Defense Critical Technology Monitoring and Assessment

(a) IN GENERAL.—The Secretary of Defense shall establish within the Office of the Director of Defense 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 as § 2525 P.L. 102–190, § 821(a), Dec. 5, 1991, 105 Stat. 1430; transferred, redesignated § 2517, and amended P.L. 102–484, § 4227, Oct. 23, 1992, 106 Stat. 2685.)

§ 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, and referred to in subsection (a).

(Added as § 2526 P.L. 102–190, § 821(a), Dec. 5, 1991, 105 Stat. 1431; transferred and redesignated § 2518 P.L. 102–484, § 4228, Oct. 23, 1992, 106 Stat. 2685.)

§ 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 P.L. 103–337, § 1113(a), Oct. 5, 1994, 108 Stat. 2864; amended P.L. 104–106, § 1081(d), Feb. 10, 1996, 110 Stat. 454.)

[§ 2520. Repealed. P.L. 104–106, § 1081(f), Feb. 10, 1996, 110 Stat. 454]

SUBCHAPTER IV—MANUFACTURING TECHNOLOGY

Sec.
2521. Manufacturing Technology Program.
2522. Armament retooling and manufacturing.

§ 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 and Technology 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) FIVE-YEAR PLAN.—(1) The Secretary of Defense shall 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.

(2) The plan shall include the following:

(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:

(C) Plans for the implementation of the advanced manufacturing technologies and processes being developed under the program.

(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.

(3) The plan shall be updated annually and shall be included in the budget justification documents submitted in support of the budget of the Department of Defense for a fiscal year (as included in the budget of the President submitted to Congress under section 1105 of title 31).

(Added as § 2525, P.L. 103–160, § 801(a)(1), Nov. 30, 1993, 107 Stat. 1700; revised in its entirety P.L. 103–337, § 256(a)(1), Oct. 5, 1994, 108 Stat. 2704; P.L. 104–106, §§ 276(a), 1081(e), 1503(a)(28), Feb. 10, 1996, 110 Stat. 241, 454, 512; P.L. 105–85, § 211(a),(b), Nov. 18, 1997, 111 Stat. 1657; P.L. 105–261, §§ 213, 1069(a)(4),(5), Oct. 17, 1998, 112 Stat. 1947, 2136; P.L. 106–65, § 216, Oct. 5, 1999, 113 Stat. 543; redesignated § 2521, P.L. 106–398, § 1[344(c)(1)(A)], Oct. 30, 2000, 114 Stat. 1654, 1654A–71.)

§ 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 P.L. 106–398, § 1[344(c)(1)(B)], Oct. 30, 2000, 114 Stat. 1654, 1654A–71.)

SUBCHAPTER V—MISCELLANEOUS TECHNOLOGY BASE POLICIES AND PROGRAMS

Sec.
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§ 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 inter-agency review of the memorandum of understanding or related agreement. If, as a result of the review, the Secretary determines that the commer-

cial 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 as § 2504 P.L. 100–456, § 824, Sept. 29, 1988, 102 Stat. 2019; amended P.L. 101–189, § 815(a), Nov. 29, 1989, 103 Stat. 1500; P.L. 101–510, § 1453, Nov. 5, 1990, 104 Stat. 1694; redesignated § 2531 and amended P.L. 102–484, §§ 4202(a), 4271(c), Oct. 23, 1992, 106 Stat. 2659, 2696.)

§ 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 tech-

nology 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 as § 2505 P.L. 100–456, § 825(b), Sept. 29, 1988, 102 Stat. 2020; redesignated § 2532 P.L. 102–484, § 4202(a), Oct. 23, 1992, 106 Stat. 2659.)

§ 2533. Determinations of public interest under the Buy American Act

(a) In determining under section 2 of the Buy American Act (41 U.S.C. 10a) whether application of such Act 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 enhance 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 as § 2501 P.L. 100–370, § 3(a)(1), July 19, 1988, 102 Stat. 855; redesignated § 2506 P.L. 100–456, § 821(b)(1)(A), Sept. 29, 1988, 102 Stat. 2014; redesignated § 2533 P.L. 102–484, § 4202(a), Oct. 23, 1992, 106 Stat. 2659; amended P.L. 103–337, § 812(a), (b)(1), Oct. 5, 1994, 108 Stat. 2815, 2816; P.L. 104–106, § 4321(b)(20), Feb. 10, 1996, 110 Stat. 673; P.L. 105–85, § 1073(a), Nov. 18, 1997, 111 Stat. 1903.)

§ 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.

(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 propellers 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 33 of the Office of Federal Procurement Policy Act (41 U.S.C. 429).

(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)[4] 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 and Technology.

(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.

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[4] Section 811(b) of the National Defense Authorization Act for Fiscal Year 1998 (P.L. 105–85; 111 Stat. 1840) provides:

(b) EFFECTIVE DATE.—Subsection (i) of section 2534 of such title, as added by subsection (a), shall apply with respect to—

(1) contracts and subcontracts entered into on or after [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.

(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.

(Added as § 2400 P.L. 97–295, § 1(29)(A), Oct. 12, 1982, 96 Stat. 1294; amended P.L. 100–180, §§ 124(a), (b)(1), 824(a), Dec. 4, 1987, 101 Stat. 1042, 1134; transferred, redesignated § 2502, and amended P.L. 100–370, § 3(b)(1), July 1988, 102 Stat. 855; redesignated § 2507 and amended P.L. 100–456, §§ 821(b)(1)(A), 822, Sept. 29, 1988, 102 Stat. 2014, 2017; amended P.L. 101–510, §§ 835(a), 1421, Nov. 5, 1990, 104 Stat. 1614, 1682; P.L. 102–190, §§ 834, 835, Dec. 5, 1991, 105 Stat. 1447–1448; redesignated § 2534 and amended P.L. 102–484, §§ 831, 833(a), 1052(33), 4202(a), 4271(b)(4), Oct. 23, 1992, 106 Stat. 2460, 2461, 2501, 2659, 2696; P.L. 103–160, § 904(d), Nov. 30, 1993, 107 Stat. 1728; P.L. 103–337, § 814, Oct. 5, 1994, 108 Stat. 2817; P.L. 103–355, § 4102(i), Oct. 13, 1994, 108 Stat. 3341; P.L. 104–106, §§ 806, 1503(a)(30), Feb. 10, 1996, 110 Stat. 390, 512; P.L. 104–201, §§ 810, 1074(a)(14), Sept. 23, 1996, 110 Stat. 2608, 2659; P.L. 105–85, §§ 371(d)(1), 811(a), 1073(a)(55), Nov. 18, 1997, 111 Stat. 1706, 1839, 1903; P.L. 106–398, § 1[805], Oct. 30, 2000, 114 Stat. 1654, 1654A–207.)

§ 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 this section, the Secretary is authorized and directed to—

(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 title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.) 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 purposes 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 "Secretary" means Secretary of Defense.

(2) 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; (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.

(3) 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 P.L. 102–484, § 4235, Oct. 23, 1992, 106 Stat. 2690 [transferred from sections 2, 3, and 4 of Defense Industrial Reserve Act (50 U.S.C. 452 et seq.]; amended P.L. 103–35, § 201(c)(8), May 31, 1993, 107 Stat. 98; P.L. 103–337, § 379(a), Oct. 5, 1994, 108 Stat. 2737.)

§ 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 P.L. 102–484, § 836(a)(1), Oct. 23, 1992, 106 Stat. 2462; amended P.L. 103–35, § 201(d)(4), May 31, 1993, 107 Stat. 99; P.L. 103–160, § 842, Nov. 30, 1993, 107 Stat. 1719; P.L. 104–201, § 828, Sept. 23, 1996, 110 Stat. 2611.)

§ 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 $100,000 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)) 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 P.L. 102–484, § 838(a), Oct. 23, 1992, 106 Stat. 2465; amended P.L. 103–35, § 201(d)(5), (h)(2), May 31, 1993, 107 Stat. 99, 100.)

§ 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 P.L. 103–160, § 822(a)(1), Nov. 30, 1993, 107 Stat. 1704; amended P.L. 103–337, § 811, Oct. 5, 1994, 108 Stat. 2815.)

§ 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 suffi-

cient 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 P.L. 103–160, § 822(a)(1), Nov. 30, 1993, 107 Stat. 1704.)

§ 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 as § 2540 P.L. 103–160, § 822(a)(1), Nov. 30, 1993, 107 Stat. 1704; redesignated 2539a P.L. 103–337, § 1070(a)(13)(A), Oct. 5, 1994, 108 Stat. 2856.)

§ 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; and

(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.

(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 for services made available under subsection (a)(3) 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 for services made available under subsection (a)(3) may be credited to the appropriations or other funds of the activity making such services available.

(Added as § 2541 P.L. 103–160, § 822(b)(1), Nov. 30, 1993, 107 Stat. 1705; redesignated § 2539b P.L. 103–337, § 1070(a)(13)(A), Oct. 5, 1994, 108 Stat. 2856; amended P.L. 103–355, § 3022, Oct. 13, 1994, 108 Stat. 3333; P.L. 104–106, § 804, Feb. 10, 1996, 110 Stat. 390; P.L. 106–65, § 1066(a)(23), Oct. 5, 1999, 113 Stat. 771.)

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.

(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 P.L. 104–106, § 1321(a)(1), Feb. 10, 1996, 110 Stat. 475.)

§ 2540a. Transferability

A guarantee issued under this subchapter shall be fully and freely transferable.

(Added P.L. 104–106, § 1321(a)(1), Feb. 10, 1996, 110 Stat. 476.)

§ 2540b. Limitations

(a) TERMS AND CONDITIONS OF LOAN GUARANTEES.—In issuing a guarantee under this subchapter 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 non-defense 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 P.L. 104–106, § 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 P.L. 104–106, § 1321(a)(1), Feb. 10, 1996, 110 Stat. 476; P.L. 106–398, § 1[1081(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–284.)

§ 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 P.L. 104–106, § 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 P.L. 106–398, § 1[1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–258.)

§ 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 P.L. 106–398, § 1[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 Fed-

eral 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 attributable to the loan guarantee program under this subchapter.

(Added P.L. 106–398, § 1[1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–259.)

§ 2541c. Transferability, additional limitations, and definition

The following provisions of subtitle VI of this chapter apply to guarantees issued under this subtitle:

(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 P.L. 106–398, § 1[1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

§ 2541d. Reports

(a) REPORT BY COMMERCIAL FIRMS TO SECRETARY OF DEFENSE.—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.

(b) ANNUAL REPORT BY SECRETARY OF DEFENSE TO CONGRESS.—Not later than March 1 of each year in which guarantees are made under this subchapter, the Secretary of Defense shall submit to Congress a report on the loan guarantee program under this subchapter. The report shall include the following:

(1) The amounts of the loans for which guarantees were issued during the year preceding the year of the report.

(2) The success of the program in improving the protection of the critical infrastructure of the commercial firms covered by the guarantees.

(3) The relationship of the loan guarantee program to the critical infrastructure protection program of the Department of Defense, together with an assessment of the extent to which the loan guarantee program supports the critical infrastructure protection program.

(4) Any other information on the loan guarantee program that the Secretary considers appropriate to include in the report.

(Added P.L. 106–398, § 1[1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

[CHAPTER 149—REPEALED]

[§§ 2511–2516. Repealed P.L. 102–494, § 4202(a), Oct. 23, 1992, 106 Stat. 2659]

[§ 2517. Transferred to § 2523]

[§ 2518. Transferred to § 2522]

[CHAPTER 150—REPEALED]

[§§ 2521–2523. Repealed P.L. 102–494, § 4202(a), Oct. 23, 1992, 106 Stat. 2659]

[§ 2524. Transferred to § 2513]

[§ 2525. Transferred to § 2517]

[§ 2526. Transferred to § 2518]

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.
2556. Shelter for homeless; incidental services.
2557. Excess nonlethal supplies: humanitarian relief.
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.
2561. Humanitarian assistance.
2562. Limitation on use of excess construction or fire equipment from Department of Defense stocks in foreign assistance or military sales programs.
2563. Articles and services of industrial facilities: sale to persons outside the Department of Defense.
2564. Provision of support for certain sporting events.
2555.[1] Nuclear test monitoring equipment: furnishing to foreign governments.

§ 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, § 2541, ch. 1041, 70A Stat. 142; redesignated § 2551 P.L. 106–398, § 1[1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

§ 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

[1] So in original. Probably should be redesignated 2565.

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, § 2542, ch. 1041, 70A Stat. 142; redesignated § 2552 P.L. 106–398, § 1[1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

§ 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 Rep-

resentatives 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 as § 2543 P.L. 85–861, § 1(48)(A), Sept. 2, 1958, 72 Stat. 1458; amended P.L. 96–513, § 511(81), Dec. 12, 1980, 94 Stat. 2927; P.L. 104–201, § 366(a), Sept. 23, 1996, 110 Stat. 2495; P.L. 105–225, § 4(a)(2), Aug. 12, 1998, 112 Stat. 1498; redesignated § 2553 P.L. 106–398, § 1[1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

§ 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 Military Airlift 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.

(Added as § 2544 P.L. 92–249, Mar. 10, 1972, 86 Stat. 62; amended P.L. 104–106, § 376, Feb. 10, 1996, 110 Stat. 283; redesignated § 2554 P.L. 106–398, § 1[1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

§ 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 Military Airlift 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 § 2545 P.L. 95–492, § 1, Oct. 20, 1978, 92 Stat. 1642; redesignated § 2555 P.L. 106–398, § 1[1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

§ 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 provisions of such bedding will not interfere with military requirements.

(e) The Secretary of Defense shall prescribe regulations for the administration of this section.

(Added § 2546 P.L. 98–94, Sept. 24, 1983, § 305, 97 Stat. 628; amended P.L. 99–167, Dec. 3, 1985, § 825, 99 Stat. 992; redesignated § 2556 P.L. 106–398, § 1[1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

§ 2557. Excess nonlethal supplies: humanitarian relief

(a) The Secretary of Defense may make available for humanitarian relief purposes any nonlethal excess supplies of the Department of Defense.

(b) 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.

(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. 413 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 as § 2547 P.L. 99–145, Nov. 8, 1985, § 1454(a), 99 Stat. 761; amended P.L. 100–26, § 7(k)(2), April 21, 1987, 101 Stat. 284; P.L. 101–510, § 1322(a)(10), Nov. 5, 1990, 104 Stat. 1671; P.L. 102–88, § 602(c)(3), Aug. 14, 1991, 105 Stat. 444; redesignated § 2557 P.L. 106–398, § 1[1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

§ 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 as § 2548 P.L. 101–189, § 329(a)(1), Nov. 29, 1989, 103 Stat. 1417; redesignated § 2558 P.L. 106–398, § 1[1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

§ 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 as § 2549 P.L. 101–510, § 1481(f)(1), Nov. 5, 1990, 104 Stat. 1707; redesignated § 2559 P.L. 106–398, § 1[1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

§ 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 as § 2550 P.L. 101–510, § 1481(g)(1), Nov. 5, 1990, 104 Stat. 1707; redesignated § 2560 P.L. 106–398, § 1[1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

§ 2561. Humanitarian assistance

(a) AUTHORIZED ASSISTANCE.—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.

(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 International Relations of the House of Representatives.

(Added as § 2551 P.L. 102–484, § 304(c), Oct. 23, 1992, 106 Stat. 2361; amended P.L. 104–106, § 1312, Feb. 10, 1996, 110 Stat. 474; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774; redesignated § 2561 and amended P.L. 106–398, § 1[1033(b)(1), (c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

§ 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 the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472 et seq.) 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 as § 2552 P.L. 102–484, § 4304(a), Oct. 23, 1992, 106 Stat. 2699; redesignated § 2562 and amended P.L. 106–398, § 1[1033(b)(1), (c)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

§ 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 in any case of willful misconduct or gross negligence, 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.

(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 as § 2553 P.L. 103–337, § 339(a)(1), Oct. 5, 1994, 108 Stat. 2718; amended P.L. 106–65, § 331(a)(2), (b), Oct. 5, 1999, 113 Stat. 566, 567; redesignated § 2563 P.L. 106–398, § 1[1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

§ 2564. Provision of support for certain sporting events [2]

(a) SECURITY AND SAFETY ASSISTANCE.—At the request of a Federal, State, or local government agency responsible for pro-

[2] Section 5802 of the Omnibus Consolidated Appropriations Act, 1997 (P.L. 104–208; 110 Stat. 3009–522), provides:

SEC. 5802. 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 (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–

viding 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.

(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)—

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335 and 104–61 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 [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 45 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.

(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.

(Added as § 2554 P.L. 104–201, § 367(a), Sept. 23, 1996, 110 Stat. 2496; amended P.L. 105–85, § 1073(a)(56), Nov. 18, 1997, 111 Stat. 1903; redesignated § 2564 P.L. 106–398, § 1[1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

§ 2555.[3] Nuclear test monitoring equipment: furnishing to foreign governments

(a) AUTHORITY TO CONVEY OR PROVIDE NUCLEAR TEST MONITORING EQUIPMENT.—Subject to subsection (b), the Secretary of Defense may—

(1) convey or otherwise provide to a foreign government (A) equipment for the monitoring of nuclear test explosions, and (B) associated equipment; and

(2) as part of any such conveyance or provision of equipment, install such equipment on foreign territory or in international waters.

(b) AGREEMENT REQUIRED.—Nuclear test explosion monitoring equipment may be conveyed or otherwise provided 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;

(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; and

(3) 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.

(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 P.L. 106–398, § 1[1203(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–324.)

[3] So in original. Probably should be redesignated 2565.

CHAPTER 153—EXCHANGE OF MATERIAL AND DISPOSAL OF OBSOLETE, SURPLUS, OR UNCLAIMED PROPERTY

Sec.
2571. Interchange of property 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 and firefighting 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. Military equipment identified on United States munitions list: annual report of public sales.
2582.[1] Military working dogs: transfer and adoption at end of useful working life.

§ 2571. Interchange of property and services

(a) If either of the Secretaries concerned requests it and the other approves, supplies and real estate 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; Sept. 2, 1958, P.L. 85–861, § 1(49), 72 Stat. 1459; Dec. 3, 1985, P.L. 99–167, § 821, 99 Stat. 991.)

[1] The second item designated as 2582, added by section 1(b) of P.L. 106–446 (114 Stat. 1933), probably should be 2583.

§ 2572. Documents, historical artifacts, and condemned or obsolete combat materiel: loan, gift, or exchange [2]

(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 Transportation), to any of the following:

(1) A municipal corporation.

(2) A soldiers' monument association.

(3) A museum, historical society, or historical institution of a State or a foreign nation.

(4) An incorporated museum 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.

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[2] Section 1051 of the National Defense Authorization Act for Fiscal Year 2000 (P.L. 106–65; 113 Stat. 763) provides:

SEC. 1051. MORATORIUM ON THE RETURN OF VETERANS MEMORIAL OBJECTS TO FOREIGN NATIONS WITHOUT SPECIFIC AUTHORIZATION IN LAW.

(a) PROHIBITION.—Notwithstanding section 2572 of title 10, United States Code, and any other provision of law, during the moratorium period specified in subsection (c) 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, unless such transfer is specifically authorized by law.

(b) DEFINITIONS.—In this section:

(1) ENTITY CONTROLLED BY A FOREIGN GOVERNMENT.—The term "entity controlled by a foreign government" has the meaning given that term in section 2536(c)(1) of title 10, United States Code.

(2) VETERANS MEMORIAL OBJECT.—The term "veterans memorial object" means any object, including a physical structure or portion thereof, that—

(A) is located at a cemetery of the National Cemetery System, war memorial, or military installation in the United States;

(B) is dedicated to, or otherwise memorializes, the death in combat or combat-related duties of members of the United States Armed Forces; and

(C) was brought to the United States from abroad as a memorial of combat abroad.

(c) PERIOD OF MORATORIUM.—The moratorium period for the purposes of this section is the period beginning on [Oct. 5, 1999] and ending on September 30, 2001.

(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 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486).

(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).

(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.

(Aug. 10, 1956, ch. 1041, 70A Stat. 143; Dec. 12, 1980, P.L. 96–513, § 511(82), 94 Stat. 2927; revised in its entirety P.L. 100–456, § 324(a), Sept. 29, 1988, 102 Stat. 1954; amended P.L. 101–510, § 325(a), Nov. 5, 1990, 104 Stat. 1531; P.L. 102–484, § 373, Oct. 23, 1992, 106 Stat. 2385; P.L. 103–337, § 1071, Oct. 5, 1994, 108 Stat. 2859; P.L. 104–106, § 372, Feb. 10, 1996, 110 Stat. 280.)

[§ 2573. Repealed. P.L. 96–513, § 511(83)(A), Dec. 12, 1980, 94 Stat. 2927]

§ 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.)

§ 2575. Disposition of unclaimed property

(a) The Secretary of any military department, and the Secretary of Transportation, 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 department, 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 the 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; Aug. 28, 1965, P.L. 89–143, 79 Stat. 581; Dec. 12, 1980, P.L. 96–513, § 511(84), 94 Stat. 2927; Nov. 29, 1989, P.L. 101–189, §§ 322(a), (b), 1622(f)(1), 103 Stat. 1413, 1605; Nov. 5, 1990, P.L. 101–510, § 1533(a)(2), 104 Stat. 1733; Feb. 10, 1996, P.L. 104–106, § 374(a), 110 Stat. 281; Oct. 19, 1996, P.L. 104–316, § 202(d), 110 Stat. 3842.)

§ 2576. Surplus military equipment: sale to State and local law enforcement and firefighting agencies

(a) The Secretary of Defense, under regulations prescribed by him, may sell to State and local law enforcement and firefighting agencies, at fair market value, pistols, revolvers, shotguns, rifles of a caliber not exceeding .30, ammunition for such firearms, gas masks, and protective body armor which (1) are suitable for use by such agencies in carrying out law enforcement and firefighting activities, and (2) have been determined to be surplus property under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.).

(b) Such surplus military equipment shall not be sold under the provisions of this section to a State or local law enforcement or firefighting 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 or firefighting 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 P.L. 90–500, § 403(a) Sept. 20, 1968, 82 Stat. 851; amended P.L. 96–513, § 511(85), Dec. 12, 1980, 94 Stat. 2927.)

§ 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 counter-drug and counter-terrorism 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 and the Director of National Drug Control Policy.

(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; 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 agency.

(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 counter-drug or counter-terrorism activities of the recipient agency.

(Added P.L. 104–201, § 1033(a)(1), Sept. 23, 1996, 110 Stat. 2639.)

§ 2576b. Excess personal property: sale or donation to assist firefighting agencies

(a) TRANSFER AUTHORIZED.—Subject to subsection (b), the Secretary of Defense may 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 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 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 P.L. 106–398, § 1[1706(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–367.)

§ 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 section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) 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 P.L. 97–214, § 6(b)(1), July 12, 1982, 96 Stat. 172; amended P.L. 98–525, § 1405(37); Oct. 19, 1984, 98 Stat. 2624.)

§ 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 Transportation, and a vessel under the jurisdiction of the Department of Transportation may be transferred or otherwise made available without reimbursement to a militry department. Any such transfer may be made only upon the request of the Secretary of the military department concerned or the Secretry of Transportation, as the case may be, and with the approval of the Secretary of the department having jurisdiction of the vessel.

(Added P.L. 100–370, § 1(k)(1), July 19, 1988, 102 Stat. 848.)

§ 2579. War booty: procedures for handling and retaining battlefield objects [3]

(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 P.L. 103–160, § 1171(a)(1), Nov. 30, 1993, 107 Stat. 1765.)

§ 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

[3] The Spoils of War Act of 1994 (50 U.S.C. 2201 et seq.), which generally provides that spoils of war in the possession, custody, or control of the United States may be transferred to any other party only in the same manner, and subject to the same terms, conditions, and requirements, as apply to the transfer of property of the same type otherwise owned by the United States, includes in section 556(5) (50 U.S.C. 2205(5)) an exception in the case of "minor articles of personal property which have lawfully become the property of individual members of the armed forces as war trophies pursuant to public written authorization from the Department of Defense".

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 P.L. 105–85, § 1063(a), Nov. 18, 1997, 111 Stat. 1892.)

§ 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 P.L. 105–261, § 1234, Oct. 17, 1998, 112 Stat. 2156.)

§ 2582. Military equipment identified on United States munitions list: annual report of public sales

(a) REPORT REQUIRED.—The Secretary of Defense shall prepare an annual report identifying each public sale conducted by a military department or Defense Agency of military items that are—

(1) identified on the United States Munitions List maintained under section 121.1 of title 22, Code of Federal Regulations; and

(2) assigned a demilitarization code of "B" or its equivalent.

(b) ELEMENTS OF REPORT.—(1) A report under this section shall cover all public sales described in subsection (a) that were conducted during the preceding fiscal year.

(2) The report shall specify the following for each sale:

(A) The date of the sale.

(B) The military department or Defense Agency conducting the sale.

(C) The manner in which the sale was conducted.

(D) The military items described in subsection (a) that were sold or offered for sale.

(E) The purchaser of each item.

(F) The stated end-use of each item sold.

(c) SUBMISSION OF REPORT.—Not later than March 31 of each year, the Secretary of Defense shall submit to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate the report required by this section for the preceding fiscal year.

(Added P.L. 106–398, § 1[381(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–84.)

§ 2582.[4] Military working dogs: transfer and adoption at end of useful working life

(a) AVAILABILITY FOR ADOPTION.—The Secretary of Defense may make a military working dog of the Department of Defense available for adoption by a person or entity referred to in subsection (c) 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).

(b) SUITABILITY FOR ADOPTION.—The decision whether a particular military working dog is suitable or unsuitable for adoption under this section shall be made by the commander of the last unit to which the dog is assigned before being declared excess. The unit commander shall consider the recommendations of the unit's veterinarian in making the decision regarding a dog's adoptability.

(c) AUTHORIZED RECIPIENTS.—Military working dogs may be adopted under this section by law enforcement agencies, former handlers of these dogs, and other persons capable of humanely caring for these dogs.

(d) CONSIDERATION.—The transfer of a military working dog under this section may be without charge to the recipient.

(e) LIMITATIONS ON LIABILITY FOR TRANSFERRED DOGS.—(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 working dog transferred under this section, including any training provided to the dog while a military working dog.

(2) Notwithstanding any other provision of law, the United States shall not be liable for any veterinary expense associated with a military working dog transferred under this section for a

[4] So in original. Probably should be redesignated 2583.

condition of the military working dog before transfer under this section, whether or not such condition is known at the time of transfer under this section.

(f) ANNUAL REPORT.—The Secretary shall submit to Congress an annual report specifying the number of military working dogs adopted under this section during the preceding year, the number of these dogs currently awaiting adoption, and the number of these dogs euthanized during the preceding year. With respect to each euthanized military working dog, the report shall contain an explanation of the reasons why the dog was euthanized rather than retained for adoption under this section.

(Added P.L. 106–446, § 1(a), Nov. 6, 2000, 114 Stat. 1932.)

CHAPTER 155—ACCEPTANCE OF GIFTS AND SERVICES

Sec.
2601. General gift funds.
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[2609. Repealed.]
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§ 2601. General gift funds

(a) The Secretary concerned may accept, hold, administer, and spend any gift, devise, or bequest of real or personal property, made on the condition that it 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 his department. He may pay all necessary expenses in connection with the conveyance or transfer of a gift, devise, or bequest made under this subsection.

(b) Gifts and bequests of money, and the proceeds of the sale of property, received under subsection (a) shall be deposited in the Treasury in the fund called—

(1) "Department of the Army General Gift Fund", in the case of deposits of that department;

(2) "Department of the Navy General Gift Fund", in the case of deposits of that department;

(3) "Department of the Air Force General Gift Fund", in the case of deposits of that department; and

(4) "Coast Guard General Gift Fund", in the case of deposits of the Secretary of Transportation.

The Secretary concerned may disburse funds deposited under this subsection for the benefit or use of the designated institution or organization, subject to the terms of the gift, devise, or bequest.

(c) For the purposes of Federal income, estate, and gift taxes, property that is accepted under subsection (a) shall be considered as a gift, devise, or bequest to or for the use of the United States.

(d) The Secretary of the Treasury, upon the request of the Secretary of a military department, may retain money, securities, and the proceeds of the sale of securities, in the gift fund of the department concerned, and may 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. The Secretary of the Treasury may do likewise with respect to the Coast Guard General Gift Fund. The interest

and profits accruing from those securities shall be deposited to the credit of the gift fund of the department concerned and may be disbursed as provided in subsection (b).

(Aug. 10, 1956, ch. 1041, 70A Stat. 144; Dec. 12, 1980, P.L. 96–513, § 511(86), 94 Stat. 2927.)

§ 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.)

§ 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 P.L. 87–555, § 1(1), July 27, 1962, 76 Stat. 244.)

§ 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 P.L. 91–603, § 3(1), Dec. 31, 1970, 84 Stat. 1674.)

§ 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 P.L. 99–661, § 314(a), Nov. 14, 1986, 100 Stat. 3853; amended P.L. 103–337, § 353, Oct. 5, 1994, 108 Stat. 2731.)

§ 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 co-

operation and assistance is necessary in the interest of the morale, welfare, and recreation of members of the armed forces. [1]

(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 assitance 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 employee 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 P.L. 100–456, § 323(a), Sept. 29, 1988, 102 Stat. 1953.)

§ 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.

[1] By Executive Order No. 12715 (May 3, 1990, 55 Fed. Reg. 19051), the President determined that "the cooperation and assistance authorized by section 2606(a) of [title 10] is necessary in the interest of the morale, welfare, and recreation of members of the armed forces" and directed that "The Secretary of Defense, or his designee, shall issue regulations concerning such cooperation and support.".

(d) In this section, the term "gift" includes a bequest of personal property or a devise of real property.

(Added P.L. 101–193, § 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 each 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 quarter. 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 P.L. 101–403, § 202, Oct. 1, 1990, 104 Stat. 872; amended P.L. 102–190, § 1061(a)(16), Dec. 5, 1991, 105 Stat. 1473; P.L. 103–160, § 1105(b)(1), (2), Nov. 30, 1993, 107 Stat. 1750; P.L. 104–201, § 1063, Sept. 23, 1996, 110 Stat. 2652.)

[§ 2609. Repealed. P.L. 104–106, § 253(9), Feb. 10, 1996, 110 Stat. 235]

§ 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 P.L. 104–106, § 377(a), Feb. 10, 1996, 110 Stat. 283; amended P.L. 104–201, § 1074(a)(16), Sept. 23, 1996, 110 Stat. 2659.)

§ 2611. Asia-Pacific Center for Security Studies: acceptance of foreign gifts and donations

(a) AUTHORITY TO ACCEPT FOREIGN GIFTS AND DONATIONS.—(1) Subject to subsection (b), the Secretary of Defense may accept, on behalf of the Asia-Pacific Center, foreign gifts or donations in order to defray the costs of, or enhance the operation of, the Asia-Pacific Center.

(2) In this section, the term "Asia-Pacific Center" means the Department of Defense organization within the United States Pacific Command known as the Asia-Pacific Center for Security Studies.

(b) LIMITATION.—The Secretary may not accept a gift or donation under subsection (a) if the 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 members of the armed forces to carry out any responsibility or duty of the Department in a fair and objective manner; or

(2) the integrity of any program of the Department of Defense or of any person involved in such a program.

(c) CRITERIA FOR ACCEPTANCE.—The Secretary shall prescribe written guidance setting forth the criteria to be used in determining whether the acceptance of a foreign gift or donation would have a result described in subsection (b).

(d) CREDITING OF FUNDS.—Funds accepted by the Secretary under subsection (a) shall be credited to appropriations available to the Department of Defense for the Asia-Pacific Center. Funds so credited shall be merged with the appropriations to which credited and shall be available to the Asia-Pacific Center for the same purposes and same period as the appropriations with which merged.

(e) NOTICE TO CONGRESS.—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.

(f) FOREIGN GIFT OR DONATION DEFINED.—For purposes of this section, a foreign gift or donation is a gift or donation of funds, materials (including research materials), property, or services (including lecture services and faculty services) from a foreign government, a foundation or other charitable organization in a foreign country, or an individual in a foreign country.

(Added P.L. 106–65, § 915(a), Oct. 5, 1999, 113 Stat. 721.)

CHAPTER 157—TRANSPORTATION

Sec.
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§ 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 [1] 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—

[1] The functions of the President under section 2631(a) were delegated to the Secretary of Defense, with authority for redelegation, by a memorandum of the President of August 7, 1985 (50 Fed. Reg. 36565).

(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; Nov. 30, 1993, P.L. 103–160, § 315(a), 107 Stat. 1619.)

§ 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 P.L. 103–160, § 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; Sept. 11, 1978, P.L. 95–362, 92 Stat. 596; Nov. 26, 1979, P.L. 96–125, § 807(a)–(c)(1), 93 Stat. 949; Dec. 4, 1987, P.L. 100–180, § 318, 101 Stat. 1076.)

§ 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 P.L. 85–44, § 1, June 1, 1957, 71 Stat. 45; amended P.L. 87–651, § 111(a), Sept. 7, 1962, 76 Stat. 510; P.L. 96–513, § 511(87), Dec. 12, 1980, 94 Stat. 2927; P.L. 97–258, § 3(b)(7), Sept. 13, 1982, 96 Stat. 1063.)

§ 2634. Motor vehicles: transportation or storage for members on change of permanent station or extended deployment

(a) When a member of an armed force is ordered to make a change of permanent station, one motor vehicle that is owned or leased by the member (or a dependent of the member) and is for the personal use of the member or his dependents may, unless a motor vehicle owned or leased by him (or a dependent of his) was transported in advance of that change of permanent station under section 406(h) of title 37, be transported, at the expense of the United States, to his new station or such other place as the Secretary concerned may authorize—

(1) on a vessel owned, leased, or chartered by the United States;

(2) by privately owned American shipping services;

(3) by foreign-flag shipping services if shipping services described in clauses (1) and (2) are not reasonably available; or

(4) by other surface transportation if such means of transport does not exceed the cost to the United States of other authorized means.

When the Secretary concerned determines that a replacement for that motor vehicle is necessary for reasons beyond the control of the member and is in the interest of the United States, and he approves the transportation in advance, one additional motor vehicle of the member (or a dependent of the member) may be so transported.

(b)(1) In lieu of transportation authorized by this section, if a member is ordered to make a change of permanent station to a foreign country and the laws, regulations, or other restrictions imposed by the foreign country or the United States preclude entry of a motor vehicle described in subsection (a) into that country, or would require extensive modification of the vehicle as a condition

to entry, the member may elect to have the vehicle stored at the expense of the United States at a location approved by the Secretary concerned.

(2) If a member is transferred or assigned in connection with a contingency operation to duty at a location other than the permanent station of the member for a period of more than 30 consecutive days, but the transfer or assignment is not considered a change of permanent station, the member may elect to have a motor vehicle described in subsection (a) stored at the expense of the United States at a location approved by the Secretary concerned.

(3) Authorized expenses under this subsection include costs associated with the delivery of the motor vehicle for storage and removal of the vehicle for delivery to a destination approved by the Secretary concerned.

(c) When there has been a shipping error, or when orders directing a change of permanent station have been canceled, revoked, or modified after receipt by the member, a motor vehicle transported pursuant to this section may also be reshipped or transshipped in accordance with this section.

(d) When the Secretary concerned makes a determination under section 406(j) of title 37 that the dependents of a member on a permanent change of station are unable to accompany the member to an overseas duty station because of unexpected and uncontrollable circumstances, and the member shipped a motor vehicle pursuant to this section in anticipation of a dependent accompanying the member to the new duty station, the member may reship or transship such motor vehicle in accordance with this section.

(e) The Secretary of Defense (and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy) may prescribe regulations limiting those leased motor vehicles that may be transported pursuant to this section based upon the length of the lease and other terms and conditions of the lease that the Secretary considers appropriate.

(f) No carrier, port agent, warehouseman, freight forwarder, or other person involved in the transportation of property may have any lien on, or hold, impound, or otherwise interfere with, the movement of a motor vehicle being transported under this section.

(g) If a motor vehicle of a member (or a dependent of the member) that is transported at the expense of the United States under this section does not arrive at the authorized destination of the vehicle by the designated delivery date, the Secretary concerned shall reimburse the member for expenses incurred after that date to rent a motor vehicle for the member's use, or for the use of the dependent for whom the delayed vehicle was transported. The amount reimbursed may not exceed $30 per day, and the rental period for which reimbursement may be provided expires after 7 days or on the date on which the delayed vehicle arrives at the authorized destination (whichever occurs first).

(h) In this section:

(1) The term "change of permanent station" means the transfer or assignment of a member of the armed forces from a permanent station inside the continental United States to a

permanent station outside the continental United States or from a permanent station outside the continental United States to another permanent station. It also includes an authorized change in home port of a vessel, or a transfer or assignment between two permanent stations in the continental United States when the member cannot, because of injury or the conditions of the order, drive the motor vehicle between the permanent duty stations.

(2) The term "continental United States" does not include Alaska.

(Added P.L. 87–651, § 111(b), Sept. 7, 1962, 76 Stat. 510; amended P.L. 88–431, § 1(b), Aug. 14, 1964, 78 Stat. 439; P.L. 89–101, § 1(1), July 30, 1965, 79 Stat. 425; P.L. 93–548, §§ 1, 2, Dec. 26, 1974, 88 Stat. 1743; P.L. 97–60, § 202, Oct. 14, 1981, 95 Stat. 1005; P.L. 99–661, §§ 611, 620(b)(2), Nov. 14, 1986, 100 Stat. 3878, 3883; P.L. 100–26, § 7(j)(6), April 21, 1987, 101 Stat. 283; P.L. 100–180, § 616(a), Dec. 4, 1987, 101 Stat. 1096; P.L. 102–484, § 622(b), Oct. 23, 1992, 106 Stat. 2422; P.L. 104–106, § 642(a)(2), Feb. 10, 1996, 110 Stat. 368; P.L. 104–201, § 368(a) & (c), Sept. 23, 1996, 110 Stat. 2497; P.L. 105–261, § 631(b)(2), 653(a), Oct. 17, 1998, 112 Stat. 2044, 2051.)

§ 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 Transportation 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 P.L. 93–155, § 814(a), Nov. 16, 1973, 87 Stat. 620; amended P.L. 96–513, § 511(88), Dec. 12, 1980, 94 Stat. 2928.)

§ 2636. Deductions from amounts due carriers [2]

(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

[2] Subsections (a)(2) and (b) of section 2636 apply with respect to contracts entered into after October 30, 2000, pursuant to section 1009(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654A–251).

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 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

(Added P.L. 97–258, § 2(b)(5)(B), Sept. 13, 1982, 96 Stat. 1053; amended P.L. 106–398, § 1[1009(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–250.)

§ 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 P.L. 101–510, § 326(a), Nov. 5, 1990, 104 Stat. 1531 [Previous § 2637 repealed P.L. 99–550, § 2(a), 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 P.L. 98–525, § 1401(j), Oct. 19, 1984, 98 Stat. 2620.)

§ 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 P.L. 98–525, § 1401(j), Oct. 19, 1984, 98 Stat. 2620.)

§ 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 P.L. 99–661, § 1204(a), Nov. 14, 1986, 100 Stat. 3969; amended P.L. 103–272, § 5(b)(1), July 5, 1994, 108 Stat. 1373; P.L. 105–85, § 1075(a), Nov. 18, 1997, 111 Stat. 1911.)

§ 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 P.L. 100–180, § 1250(a)(1), Dec. 4, 1987, 101 Stat. 1167; amended P.L. 101–189, § 1621(a)(1), (2), (8), Nov. 29, 1989, 103 Stat. 1602, 1603; P.L. 103–337, §§ 652(b), 1070(e)(8), Oct. 5, 1994, 108 Stat. 2794, 2859.)

§ 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 P.L. 105–262, § 8121(a), Oct. 17, 1998, 112 Stat. 2332; amended P.L. 106–65, § 1066(a)(24), Oct. 5, 1999, 113 Stat. 771.)

§ 2642. Reimbursement rate for airlift services provided to Central Intelligence Agency

(a) AUTHORITY.—The Secretary of Defense may authorize the use of the Department of Defense reimbursement rate for military airlift services provided by a component of the Department of Defense to the Central Intelligence Agency, if the Secretary of Defense determines that those military airlift services are provided for activities related to national security objectives.

(b) 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 P.L. 102–88, § 501(a), Aug. 14, 1991, 105 Stat. 435.)

§ 2643. Commissary and exchange services: transportation overseas

The Secretary of Defense shall authorize the officials responsible for operation of commissaries and military exchanges to negotiate directly with private carriers for the most cost-effective transportation of commissary and exchange supplies by sea without relying on 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 transportation contracts under the authority of this section.

(Added P.L. 104–106, § 334(a), Feb. 10, 1996, 110 Stat. 261.)

§ 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.

(Added as § 4742 Aug. 10, 1956, ch. 1041, 70A Stat. 266; transferred and redesignated § 2644 P.L. 104–201, § 906(b), Sept. 23, 1996, 110 Stat. 2620.)

§ 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 Transpor-

tation 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 the second sentence of section 1208(a) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1288(a)).

(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 $1,000,000, the Secretary of Defense shall submit to Congress—

(1) 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; and

(2) 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.

(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) ANNUAL REPORT ON CONTINGENT LIABILITIES.—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.).

(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 title XII of the Merchant Marine Act, 1936 (46 U.S.C. App. 1281 et seq.), 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 the first sentence of section 1208(a) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1288(a)).

(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 P.L. 104–201, § 1079(b)(1), Sept. 23, 1996, 110 Stat. 2669; amended P.L. 105–85, § 1073(a)(57), Nov. 18, 1997, 111 Stat. 1903.)

§ 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 P.L. 105–261, § 813, Oct. 17, 1998, 112 Stat. 2087.)

CHAPTER 159—REAL PROPERTY; RELATED PERSONAL PROPERTY; AND LEASE OF NONEXCESS PROPERTY

Sec.
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2693. Conveyance of certain property.
2694. Conservation and cultural activities.
2695. Acceptance of funds to cover administrative expenses relating to certain real property transactions.
2696. Screening of real property for further Federal use before conveyance.

§ 2661. Miscellaneous administrative provisions relating to real property

(a) 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) 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.

(Added P.L. 100–370, § 1(l)(3), July 19, 1988, 102 Stat. 849.)

[§ 2661a. Repealed. P.L. 97–295, § 1(31)(A), Oct. 12, 1982, 96 Stat. 1296]

§ 2662. Real property transactions: reports to congressional committees

(a) GENERAL NOTICE AND WAIT REQUIREMENTS.—The Secretary of a military department, or his designee, may not enter into any of the following listed transactions by or for the use of that department 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 Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives:

(1) An acquisition of fee title to any real property, if the estimated price is more than $500,000.

(2) A lease of any real property to the United States, if the estimated annual rental is more than $500,000.

(3) A lease or license of real property owned by the United States, if the estimated annual fair market rental value of the property is more than $500,000.

(4) 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 $500,000.

(5) A report of excess real property owned by the United States to a disposal agency, if the estimated value is more than $500,000.

(6) 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.

If a transaction covered by clause (1) or (2) is part of a project, the report must include a summarization 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 clause (5) 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.

(b) ANNUAL REPORTS ON CERTAIN MINOR TRANSACTIONS.—The Secretary of each military department 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 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.

(c) GEOGRAPHIC SCOPE; EXCEPTED PROJECTS.—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 apply to real property for river and harbor projects or flood control projects, 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) NOTICE AND WAIT REGARDING LEASES OF SPACE FOR DOD BY GSA.—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 $500,000 (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 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).

(f) 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.

(g) 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, and the reporting requirement set forth in subsection (e) 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) or (e), as the case may be, but for the operation of paragraph (1) or (2).

(Aug. 10, 1956, ch. 1041, 70A Stat. 147; June 25, 1959, P.L. 86–70, § 6(c), 73 Stat. 142; June 8, 1960, P.L. 86–500, § 511(1), 74 Stat. 186; July 12, 1960, P.L. 86–624, § 4(c), 74 Stat. 411; Oct. 27, 1971, P.L. 92–145, § 707(5), 85 Stat. 412; Oct. 25, 1972, P.L. 92–545, § 709, 86 Stat. 1154; Dec. 27, 1974, P.L. 93–552, § 610, 88 Stat. 1765; Oct. 7, 1975, P.L. 94–107, § 607(5), (6), 89 Stat. 566; Sept. 30, 1976, P.L. 94–431, § 614, 90 Stat. 1367; Oct. 10, 1980, P.L. 96–418, § 805, 94 Stat. 1777; Sept. 29, 1988, P.L. 100–456, § 2803, 102 Stat. 2116; Nov. 5, 1990, P.L. 101–510, § 1311(6), 104 Stat. 1670; Oct. 24, 1992, P.L. 102–496, § 403, 106 Stat. 3185; Feb. 10, 1996, P.L. 104–106, §§ 1502(a)(23), 4321(b)(21), 110 Stat. 505, 673; P.L. 105–261, § 2811, Oct. 17, 1998, 112 Stat. 2204; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Oct. 30, 2000, P.L. 106–398, § 1[2811], 114 Stat. 1654, 1654A–416.)

§ 2663. Acquisition

(a) 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—

(1) the site, construction, or operation of fortifications, coast defenses, or military training camps;

(2) 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

(3) the development and transmission of power for the operation of plants under clause (2).

(b) In time of war or when war is imminent, the United States may, immediately upon the filing of a petition for condemnation under subsection (a), take and use the land to the extent of the interest sought to be acquired.

(c) 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.

(d) 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).

(Aug. 10, 1956, ch. 1041, 70A Stat. 147; Sept. 2, 1958, P.L. 85–861, § 33(a)(14), 72 Stat. 1565.)

§ 2664. Acquisition of property for lumber production

(a) The Secretary of a military department, the Secretary of Transportation, or any one or more of them, may have proceedings brought in the name of the United States to acquire by condemnation any interest in property named in subsection (b), including temporary use, and needed for—

(1) the production of aircraft, vessels, dry docks, or equipment for them;

(2) the procurement of supplies for aircraft, vessels, and dry docks; or

(3) housing for persons employed by the United States in connection with functions of the Army, Navy, Air Force, or Marine Corps, or the functions transferred to the Secretary of Transportation under section 3 of the Maritime Act of 1981 (46 U.S.C. App. 1602).

(b) The kinds of property that may be acquired by condemnation under subsection (a) are—

(1) standing or fallen timber;

(2) sawmills;

(3) camps;

(4) machinery;

(5) logging roads;

(6) rights-of-way;

(7) supplies; and

(8) works, property, or appliances suitable for the production of lumber and timber products.

(c) Jurisdiction over condemnation proceedings under this section is vested in the United States District Court for the district in which the property, or any part of it, sought to be condemned is located, regardless of its value.

(d) In time of war or when war is imminent, the United States may, immediately upon the filing of a petition for condemnation under subsection (a), take and use the property to the extent of the interest sought to be acquired.

(e) A person named in subsection (a) may contract for or buy any interest in property named in subsection (b), including temporary use, needed for any purpose named in subsection (a), as soon as the owner fixes a price for it and that person considers that price to be reasonable.

(f) A person named in subsection (a) may accept for the United States a gift of any property named in subsection (b), including temporary use, for any purpose named in subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 148; Sept. 2, 1958, P.L. 85–861, § 33(a)(15), 72 Stat. 1565; Dec. 12, 1980, P.L. 96–513, § 511(90), 94 Stat. 2928; Aug. 6, 1981, P.L. 97–31, § 12(3)(A), 95 Stat. 153; Oct. 12, 1982, P.L. 97–295, § 1(32), 96 Stat. 1296; April 21, 1987, P.L. 100–26, § 7(d)(6), 101 Stat. 281.)

§ 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 under section 2664 of this title 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 of Transportation.

(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; Aug. 1, 1977, P.L. 95–82, § 610, 91 Stat. 378; Dec. 12, 1980, P.L. 96–513, § 511(91), 94 Stat. 2928; Aug. 6, 1981, P.L. 97–31, § 12(3)(B), 95 Stat. 153; Dec. 23, 1981, P.L. 97–99, § 910(a), 95 Stat. 1386; Oct. 12, 1982, P.L. 97–295, § 1(33), 96 Stat. 1296; Aug. 28, 1984, P.L. 98–407, § 809, 98 Stat. 1522; Oct. 27, 1986, P.L. 99–561, § 4, 100 Stat. 3151.)

§ 2666. Acquisition: land purchase contracts; limitation on commission

The maximum amount payable as commission on a contract for the purchase of land from funds appropriated for the Department of Defense is 2 percent of the purchase price.

(Aug. 10, 1956, ch. 1041, 70A Stat. 149.)

§ 2667. Leases: non-excess property of military departments

(a) 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 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472).

(b) 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 in 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; and

(5) may provide, notwithstanding section 321 of the Act of June 30, 1932 (40 U.S.C. 303b), 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.

(c)(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) Facilities operation support for the Secretary concerned.

(E) 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.

(4) 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.

(d)(1)(A) The Secretary of a military department shall deposit in a special account in the Treasury established for such military department 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 sections 2668 and 2669 of this title.

(iii) All proceeds received by that Secretary from authorizing the temporary use of other property under the control of that military department.

(B) Subparagraph (A) does not apply to the following proceeds:

(i) Amounts paid for utilities and services furnished lessees by the Secretary of a military department pursuant to leases entered into under this section.

(ii) Money rentals referred to in paragraph (4) or (5).

(C) Subject to subparagraphs (D) and (E), the proceeds deposited in the special account of a military department pursuant to subparagraph (A) shall be available to the Secretary of that military department, 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) Facilities operation support.

(D) At least 50 percent of the proceeds deposited in the special account of a military department under subparagraph (A) shall be available for activities described in subparagraph (C) only at the military installation where the proceeds were derived.

(E) The Secretary concerned may not expend under subparagraph (C) an amount in excess of $500,000 at a single installation until 30 days after the date on which a report on the facts of the proposed expenditure is submitted to the congressional defense committees.

(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) 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.

(4) 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 of a military department (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.

(5) Money rentals received by the United States from a lease under subsection (f) shall be deposited into the 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).

(e) 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.

(f)(1) Notwithstanding subsection (a)(3) or the Federal Property and Administrative Services Act of 1949 (to the extent such Act is inconsistent with this subsection), 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 of the military department 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

(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.

(g)(1) If a proposed lease under subsection (a) involves only personal property, the lease term exceeds one year, and 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) 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.

(h) In this section:

(1) The term "congressional defense committees" means:

(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.

(2) The term "base closure law" means the following:

(A) Section 2687 of this title.

(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).

(C) 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 term "military installation" has the meaning given such term in section 2687(e)(1) of this title.

(i) This section does not apply to oil, mineral, or phosphate lands.

(Aug. 10, 1956, ch. 1041, 70A Stat. 150; Oct. 7, 1975, P.L. 94–107, § 607(7), 89 Stat. 566; Sept. 14, 1976, P.L. 94–412, § 501(b), 90 Stat. 1258; Dec. 12, 1980, P.L. 96–513, § 511(92), 94 Stat. 2928; Oct. 12, 1982, P.L. 97–295, § 1(34), 96 Stat. 1296; Oct. 15, 1982, P.L. 97–321, § 803, 96 Stat. 1572; Nov. 5, 1990, P.L. 101–510, § 2806, 104 Stat. 1787; Dec. 5, 1991, P.L. 102–190, § 2862, 105 Stat. 1559; Oct. 23, 1992, P.L. 102–484, § 2351, 106 Stat. 2625; Nov. 30, 1993, P.L. 103–160, § 2906, 107 Stat. 1920; Feb. 10, 1996, P.L. 104–106, §§ 1502(a)(1), 2831(a), 2832, 2833, 110 Stat. 502, 558, 559; P.L. 105–85, §§ 361(b)(2), 1061(a)–(c)(1), Nov. 18, 1997, 111 Stat. 1701, 1891; P.L. 105–261, § 2821, Oct. 17, 1998, 112 Stat. 2208; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Oct. 30, 2000, P.L. 106–398, § 1[2812(a)–(e)], 114 Stat. 1654, 1654A–416.)

§ 2667a. Leases: non-excess property of Defense agencies

(a) LEASE AUTHORITY.—Whenever the Secretary of Defense considers it advantageous to the United States, the Secretary may lease to such lessee and upon such terms as the Secretary considers will promote the national defense or to be in the public interest, personal property that is—

(1) under the control of a Defense agency;

(2) not for the time needed for public use; and

(3) not excess property, as defined by section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472).

(b) LIMITATION, TERMS, AND CONDITIONS.—A lease under subsection (a)—

(1) may not be for more than five years unless the Secretary of Defense 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 the Secretary 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; and

(5) may provide, notwithstanding any other provision of law, for the improvement, maintenance, protection, repair, restoration, or replacement by the lessee, of the property leased as the payment of part or all of the consideration for the lease.

(c) COMPETITIVE SELECTION.—(1) If the term of a proposed lease under subsection (a) exceeds one year and the fair market value of the lease interest exceeds $100,000, as determined by the Secretary of Defense, the Secretary shall use competitive procedures to select the lessee.

(2) Not later than 45 days before entering into a lease described in paragraph (1), the Secretary shall submit to Congress a written notice describing the terms of the proposed lease and the competitive procedures used to select the lessee.

(d) DISPOSITION OF MONEY RENT.—Money rentals received pursuant to a lease entered into by the Secretary of Defense under

subsection (a) shall be deposited in a special account in the Treasury established for the Defense agency whose property is subject to the lease. Amounts in a Defense agency's special account shall be available, to the extent provided in appropriations Acts, solely for the maintenance, repair, restoration, or replacement of the leased property.

(Added P.L. 105–85, § 1062(a), Nov. 18, 1997, 111 Stat. 1891.)

§ 2668. Easements for rights-of-way

(a) If the Secretary of a military department finds that it will not be against the public interest, he may grant, upon such terms as he 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 his control, to a State, Territory, Commonwealth, or possession, or political subdivision thereof, or to a citizen, association, partnership, or corporation of a State, Territory, Commonwealth, or possession, for—

(1) railroad tracks;

(2) 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 he considers advisable, except a purpose covered by section 2669 of this title.

(b) No easement granted under this section may include more land than is necessary for the easement.

(c) 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) Copies of instruments granting easements over public lands under this section shall be furnished to the Secretary of the Interior.

(e) Subsection (d) of section 2667 of this title shall apply with respect to proceeds received by the Secretary of a military department in connection with an easement granted under this section in the same manner as such subsection applies to money rentals re-

ceived pursuant to leases entered into by that Secretary under such section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 150; Oct. 19, 1984, P.L. 98–525, § 1405(38), 98 Stat. 2624; Sept. 23, 1996, P.L. 104–201, § 2861, 110 Stat. 2803; Oct. 30, 2000, P.L. 106–398, § 1[2812(f)(1)], 114 Stat. 1654, 1654A–418.)

§ 2669. Easements for rights-of-way: gas, water, sewer pipe lines

(a) If the Secretary of a military department finds that it will be in the public interest and will not substantially injure the interest of the United States in the property affected, he may grant, upon such terms as he 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 his control, for gas, water, and sewer pipe lines, to a State, Territory, Commonwealth, or possession, or political subdivision thereof, or to a citizen, association, partnership, or corporation of a State, Territory, Commonwealth, or possession.

(b) No easement granted under this section may include more land than is necessary for the easement.

(c) 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; or

(3) abandonment.

(d) The Secretary concerned shall include in his annual report to the President a complete statement of each easement granted under this section, including the name and address of the grantee, the purpose of the grant, and the benefits accruing to the United States or to the public.

(e) Subsection (d) of section 2667 of this title shall apply with respect to proceeds received by the Secretary of a military department in connection with an easement granted under this section in the same manner as such subsection applies to money rentals received pursuant to leases entered into by that Secretary under such section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 151; Oct. 30, 2000, P.L. 106–398, § 1[2812(f)(2)], 114 Stat. 1654, 1654A–418.)

§ 2670. Licenses: military installations; erection and use of buildings; American National 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 section are available to aid the civilian population in a serious national disaster.

(Aug. 10, 1956, ch. 1041, 70A Stat. 151.)

§ 2671. Military reservations and facilities: hunting, fishing, and trapping

(a) The Secretary of Defense shall, with respect to each military installation or facility under the jurisdiction of any military department in a State or Territory—

(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 or Territory 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 or Territory 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 or Territory, 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 or Territory; and

(3) develop, subject to safety requirements and military security, and in cooperation with the Governor (or his designee) of the State or Territory in which the installation or facility is located, procedures under which designated fish and game or conservation officials of that State or Territory 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) The Secretary of Defense shall prescribe regulations to carry out this section.

(c) 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 or Territory 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) This section does not modify any rights granted by the treaty or otherwise to any Indian tribe or to the members thereof.

(Added P.L. 85–337, § 4(1), Feb. 28, 1958, 72 Stat. 29.)

§ 2672. Acquisition: interests in land when cost is not more than $500,000

(a)(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 $500,000, exclusive of administrative costs and the amounts of any deficiency judgments.

(2) This section 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 $500,000.

(b) 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.

(Added P.L. 85–861, § 1(51), Sept. 2, 1958, 72 Stat. 1459; amended P.L. 87–651, § 112(a), Sept. 7, 1962, 76 Stat. 511; P.L. 92–145, § 707(2), (3), Oct. 27, 1971, 85 Stat. 411; P.L. 96–418, § 805, Oct. 10, 1980, 94 Stat. 1777; P.L. 99–167, § 810(a), (b)(1), Dec. 3, 1985, 99 Stat. 989; P.L. 99–661, § 1343(a)(16), Nov. 14, 1986, 100 Stat. 3993; P.L. 100–456, § 2804, Sept. 29, 1988, 102 Stat. 2115; P.L. 105–85, § 2811(a), (b)(1), Nov. 18, 1997, 111 Stat. 1991.)

§ 2672a. Acquisition: interests in land when need is urgent

(a) The Secretary of a military department may acquire any interest in land that—

(1) he or his designee determines is needed in the interest of national defense;

(2) is required to maintain the operational integrity of a military installation; and

(3) considerations of urgency do not permit the delay necessary to include the required acquisition in an annual Military Construction Authorization Act.

(b) Appropriations available for military construction may be used for the purposes of this section. 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. The Secretary of a military department contemplating action under this section shall provide notice, in writing, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives at least 30 days in advance of any action being taken.

(Added P.L. 94–107, § 607(8), Oct. 7, 1975, 89 Stat. 566; amended P.L. 98–525, § 1405(39), Oct. 19, 1984, 98 Stat. 2624; P.L. 104–106, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 2673. Acquisition of certain interests in land: availability of funds

Appropriations available to the Department of Defense for maintenance or construction may be used for the acquisition of land or interests in land under section 2672 of this title and for the acquisition of interests in land under section 2675 of this title.

(Added P.L. 100–370, § 1(l)(1), July 19, 1988, 102 Stat. 849.)

§ 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) 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—

(1) 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

(2) 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.

(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) 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.

(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.

(Added P.L. 101–510, § 2804(a)(1), Nov. 5, 1990, 104 Stat. 1784 [Previous § 2674 repealed P.L. 97–214, § 7(1), July 12, 1982, 96 Stat. 173]; amended P.L. 102–190, § 1061(a)(18), § 2864, Dec. 5, 1991, 105 Stat. 1473, 1561; P.L. 104–106, § 1502(a)(24), Feb. 10, 1996, 110 Stat. 505; P.L. 104–201, § 369(a), (b)(1), Sept. 23, 1996, 110 Stat. 2498; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 2675. Leases: foreign countries

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 five years, and the rental for each yearly period may be paid from funds appropriated to that military department for that year.

(Added P.L. 85–861, § 1(51), Sept. 2, 1958, 72 Stat. 1460; amended P.L. 91–511, § 608, Oct. 26, 1970, 84 Stat. 1224; P.L. 94–107, § 607(10), (11), Oct. 7, 1975, 89 Stat. 567; P.L. 95–82, § 505(a), Aug. 1, 1977, 91 Stat. 371; P.L. 95–356, § 503(b), Sept. 8, 1978, 92 Stat. 579; P.L. 96–125, § 502(b), Nov. 26, 1979, 93 Stat. 940; P.L. 96–418, § 504(b), Oct. 10, 1980, 94 Stat. 1765; P.L. 97–99, § 604, Dec. 23, 1981, 95 Stat. 1374; P.L. 97–214, § 8, July 12, 1982, 96 Stat. 174; P.L. 98–525, § 1405(40), Oct. 19, 1984, 98 Stat. 2624; P.L. 101–510, § 1322(a)(11), Nov. 5, 1990, 104 Stat. 1671.)

§ 2676. Acquisition: limitation

(a) 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 the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.).

(b) 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.

(c)(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) 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,

until subsection (d) is complied with.

(d) 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 appropriate committees of Congress. 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.

(e) 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 P.L. 85–861, § 1(51), Sept. 2, 1958, 72 Stat. 1460; amended P.L. 93–166, § 608(2), Nov. 29, 1973, 87 Stat. 682; P.L. 97–214, § 5, July 12, 1982, 96 Stat. 170; P.L. 98–407, § 802, Aug. 28, 1984, 98 Stat. 1519; P.L. 99–661, § 1343(a)(17), Nov. 14, 1986, 100 Stat. 3993; P.L. 102–190, § 2870(1), Dec. 5, 1991, 105 Stat. 1562.)

§ 2677. Options: property required for military construction projects

(a) 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 he considers it suitable and likely to be needed for a military project of his department.

(b) As consideration for an option acquired under subsection (a), the Secretary may pay, from funds available to his department for real property activities, an amount that is not more than 12 percent of the appraised fair market value of the property.

(c)(1) Before acquiring an option on real property under subsection (a), the Secretary of a military department shall review the most recent inventory of real property assets published by the Resolution Trust Corporation under section 21A(b)(11)(F) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(11)(F)) and determine whether any real property listed in the inventory is suitable for use by the military department for the purposes for which the real property is sought.

(2) The requirement for the review referred to in paragraph (1) shall terminate on September 30, 1996.

(Added P.L. 85–861, § 1(51), Sept. 2, 1958, 72 Stat. 1460; amended P.L. 87–554, § 607, July 27, 1962, 76 Stat. 242; P.L. 92–145, § 707(4), Oct. 27, 1971, 85 Stat. 412; P.L. 94–273, § 6(3), Apr. 21, 1976, 90 Stat. 377; P.L. 97–214, § 10(a)(5)(A), (B), July 12, 1982, 96 Stat. 175; P.L. 97–375, § 104(b), Dec. 21, 1982, 96 Stat. 1819; P.L. 98–407, § 803, Aug. 28, 1984, 98 Stat. 1519; P.L. 102–190, § 2861, Dec. 5, 1991, 105 Stat. 1559; May 31, 1993, P.L. 103–35, § 201(c)(9), 107 Stat. 98.)

§ 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 P.L. 101–510, § 1481(h)(1), Nov. 5, 1990, 104 Stat. 1708 [Previous § 2678 repealed P.L. 97–214, § 7(1), July 12, 1982, 96 Stat. 173].)

§ 2679. Representatives of veterans' organizations: use of space and equipment

(a) 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 that Secretary concerned that are on land and from which persons are discharged or released from active duty.

(b) The commanding officer of each of those military installations shall allow the representatives described in subsection (a) to use available space and equipment at that installation.

(c) The regulations prescribed to carry out this section that are in effect on January 1, 1958, remain in effect until changed by joint action of the Secretary concerned and the Secretary of Veterans Affairs.

(d) This section does not authorize the violation of measures of military security.

(Added P.L. 87–651, § 112(c), Sept. 7, 1962, 76 Stat. 511; amended P.L. 101–189, § 1621(a)(9), Nov. 29, 1989, 103 Stat. 1603; P.L. 103–337, § 1070(e)(9), Oct. 5, 1994, 108 Stat. 2859.)

§ 2680. Leases: land for special operations activities

(a) AUTHORITY TO ACQUIRE LEASEHOLDS.—The Secretary of Defense may acquire a leasehold interest in real property if the Secretary determines that the acquisition of such interest is necessary in the interests of national security to facilitate special operations activities of forces of the special operations command established pursuant to section 167 of this title.

(b) LIMITATIONS ON AUTHORITY.—(1) The Secretary may not acquire a leasehold interest in any real property under subsection (a) if the estimated annual rental cost of that real property exceeds $500,000.

(2) The Secretary may not acquire more than five leasehold interests in real property under subsection (a) during a fiscal year.

(3) The term of a leasehold interest acquired under this section shall not exceed one year.

(c) CONSTRUCTION OR MODIFICATION OF FACILITY ON LEASEHOLD.—The Secretary may provide in a lease entered into under this section for the construction or modification of any facility on the leased property in order to facilitate the activities referred to in subsection (a). The total cost of the construction or modification of such facility may not exceed $750,000 in any fiscal year.

(d) EXPIRATION OF AUTHORITY.—The authority of the Secretary of Defense to acquire a leasehold interest in real property under this section shall expire on September 30, 2005. The expiration of that authority shall not affect the validity of any contract entered into under this section on or before that date.

(e) REPORTS.—Not later than March 1 of each year, the Secretary of Defense shall submit to the Committee on the Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report that—

(1) identifies each leasehold interest acquired during the previous fiscal year under subsection (a); and

(2) contains a discussion of each project for the construction or modification of facilities carried out pursuant to subsection (c) during such fiscal year.

(Added P.L. 102–190, § 2863(a), Dec. 5, 1991, 105 Stat. 1560; amended P.L. 103–160, § 2807(a), Nov. 30, 1993, 107 Stat. 1887; P.L. 104–106, § 2820(a)–(b), Feb. 10, 1996, 110 Stat. 556; P.L. 106–65, §§ 1067(1), 2811, Oct. 5, 1999, 113 Stat. 774, 851.)

§ 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 appro-

priateness 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 P.L. 103–160, § 846(a), Nov. 30, 1993, 107 Stat. 1722; amended P.L. 105–85, § 842, Nov. 18, 1997, 111 Stat. 1844; P.L. 105–261, § 820, Oct. 17, 1998, 112 Stat. 2090.)

§ 2682. Facilities for defense agencies

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. 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.

(Added P.L. 88–174, § 609(a)(1), Nov. 7, 1963, 77 Stat. 329; amended P.L. 97–214, § 10(a)(7), July 12, 1982, 96 Stat. 175.)

§ 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 P.L. 91–511, § 613(1), Oct. 26, 1970, 84 Stat. 1226; amended P.L. 92–545, § 707, Oct. 25, 1972, 86 Stat. 1154; P.L. 93–283, § 3, May 14, 1974, 88 Stat. 141; P.L. 99–145, § 1224(a), Nov. 8, 1985, 99 Stat. 728; P.L. 99–661, § 1343(a)(18), Nov. 14, 1986, 100 Stat. 3993; P.L. 100–526, § 106(b)(2), Oct. 24, 1988, 102 Stat. 2625.)

§ 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 on military installations 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) APPLICATION OF OTHER LAWS.—Section 1535 and chapter 63 of title 31 shall not apply to a cooperative agreement entered into under this section.

(c) 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 101(a) of the National Historic Preservation Act (16 U.S.C. 470a(a)).

(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.

(Added P.L. 104–201, § 2862(a), Sept. 23, 1996, 110 Stat. 2804; amended P.L. 105–85, § 1073(a)(58), Nov. 18, 1997, 111 Stat. 1903.)

§ 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)[1] USE FOR CONSTRUCTION AND IMPROVEMENT OF FACILITIES.—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.

(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

[1] Effective October 1, 2001, pursuant to section 333(c) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654A–60), subsection (b) of section 2685 is amended to read as follows:

(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.

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 P.L. 93–552, § 611, Dec. 27, 1974, 88 Stat. 1765; amended P.L. 95–82, § 614, Aug. 1, 1977, 91 Stat. 380; P.L. 97–321, § 804, Oct. 15, 1982, 96 Stat. 1572; P.L. 103–337, § 2851, Oct. 5, 1994, 108 Stat. 3072; P.L. 105–85, § 374, Nov. 18, 1997, 111 Stat. 1707; P.L. 106–398, § 1[333(a), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–60.)

§ 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, § 2481, 70A Stat. 141; Aug. 14, 1959, P.L. 86–156, § 1, 73 Stat. 338; transferred and redesignated § 2686 P.L. 105–85, § 371(b)(1), Nov. 18, 1997, 111 Stat. 1705.)

§ 2687. Base closures and realignments [2, 3]

(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 an evaluation of the fiscal, local economic, budgetary, environmental, strategic, and operational consequences 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 sub-

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[2] Provisions of law relating to the military base realignment and closure (BRAC) process, including title II of P.L. 100–526 and the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of P.L. 101–510), are set forth in the committee print publication of the Committee on Armed Services of the House of Representatives captioned "Compilation of Defense-Related Federal Laws (Other Than Title 10, United States Code)".

[3] Section 8019 of the Department of Defense Appropriations Act, 2001 (P.L. 106–259; 114 Stat. 678), provides:

SEC. 8019. Notwithstanding any other provision of law, during the current fiscal year [fiscal year 2001], 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 fiscal year 2002 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, the Committee on International Relations 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.

mitted to such committees, during which period no irrevocable action may be taken to effect or implement the decision.

(c) 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.

(d)(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.

(e) 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, 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 P.L. 95–82, § 612(a), Aug. 1, 1977, 91 Stat. 379; amended P.L. 95–356, § 805, Sept. 8, 1978, 92 Stat. 586; P.L. 97–214, § 10(a)(8), July 12, 1982, 96 Stat. 175; P.L. 98–525, § 1405(41), Oct. 19, 1984, 98 Stat. 2624; P.L. 99–145, § 1202(a), Nov. 8, 1985, 99 Stat. 717; P.L. 100–180, § 1231(17), Dec. 4, 1987, 101 Stat. 1161; P.L. 101–510, § 2911, Nov. 5, 1990, 104 Stat. 1819; P.L. 104–106, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 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 shall 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.

(3) A contract for the receipt of utility services as consideration under paragraph (1), 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 50 years.

(d) 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.

(e) NOTICE-AND-WAIT REQUIREMENT.—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.

(f) 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.

(g) 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. The Secretary concerned shall consider any such contribution in the economic analysis required under subsection (e).

(h) 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.

(i) LIMITATION.—This section shall not apply to projects constructed or operated by the Army Corps of Engineers under its civil works authorities.

(Added P.L. 105–85, § 2812(a), Nov. 18, 1997, 111 Stat. 1992; amended P.L. 106–65, § 1067(1), 2812, Oct. 5, 1999, 113 Stat. 774, 851; P.L. 106–398, § 1[1087(a)(15), 2813], Oct. 30, 2000, 114 Stat. 1654, 1654A–291, 1654A–418.)

§ 2689. Development of geothermal energy on military lands

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.

(Added P.L. 97–214, § 6(c)(1), July 12, 1982, 96 Stat. 173.)

§ 2690. 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 P.L. 97–214, § 6(c)(1), July 12, 1982, 96 Stat. 173; revised in its entirety P.L. 99–661, § 1205(a), Nov. 14, 1986, 100 Stat. 3971; amended P.L. 105–85, § 1041(a), Nov. 18, 1997, 111 Stat. 1885.)

§ 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 the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), 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 P.L. 98–407, § 804, Aug. 28, 1984, 98 Stat. 1519; amended P.L. 99–145, § 1303(a)(17), Nov. 8, 1985, 99 Stat. 739; P.L. 105–261, § 2812(a), (b)(1), Oct. 17, 1998, 112 Stat. 2205.)

§ 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 non-nuclear 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 materiel 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 P.L. 98–407, § 805, Aug. 28, 1984, 98 Stat. 1520; amended P.L. 102–484, § 2852, Oct. 23, 1992, 106 Stat. 2625; P.L. 103–337, § 325, Oct. 5, 1994, 108 Stat. 2711; P.L. 105–85, § 343(a)–(g)(2), Nov. 18, 1997, 111 Stat. 1686; P.L. 106–65, § 1066(a)(25), Oct. 5, 1999, 113 Stat. 772.)

§ 2693. Conveyance of certain property

(a) Except as provided in subsection (b), 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 shall—

(1) provide adequate notification of the availability of such real property or facility within the Department of Defense;

(2) if the real property or facility remains available after such notification, notify the Attorney General of its availability; and

(3) if the Attorney General certifies 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, convey the real property or facility, without reimbursement, to the public agencies referred to in section 515(a)(1) or 515(a)(3) of title I of such Act for such utilization.

(b) The provisions of this section shall not apply—

(1) 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

(2) during any portion of a fiscal year after four conveyances have been made under this section in such fiscal year.

(Added P.L. 101–647, § 1802, Nov. 29, 1990, 104 Stat. 4849 [former § 2693 transferred to § 2465].)

§ 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 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.

(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 P.L. 104–201, § 332(a)(1), Sept. 23, 1996, 110 Stat. 2484; amended P.L. 105–85, § 1073(a)(59), Nov. 18, 1997, 111 Stat. 1903.)

§ 2695. Acceptance of funds to cover administrative expenses relating to certain real property transactions [4]

(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.

(c) USE OF AMOUNTS COLLECTED.—Amounts collected under subsection (a) for administrative expenses shall be credited to the appropriation, fund, or account from which the expenses were paid. Amounts so credited shall be merged with funds in such appropriation, fund, or account and shall be available for the same purposes

[4] Section 226 of the Water Resources Development Act of 2000 (P.L. 106–541; 114 Stat. 2598) provides:

SEC. 226. ADMINISTRATIVE COSTS OF LAND CONVEYANCES.

Notwithstanding any other provision of law, the administrative costs associated with the conveyance of property by the Secretary [of the Army] 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.

and subject to the same limitations as the funds with which merged.

(Added P.L. 105–85, § 2813(a), Nov. 18, 1997, 111 Stat. 1993; amended P.L. 106–65, § 2813, Oct. 5, 1999, 113 Stat. 851.)

§ 2696. Screening of real property for further Federal use before conveyance

(a) SCREENING REQUIREMENT.—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 the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.).

(b) 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 (a) with regard to the real property and notify the Secretary concerned 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 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.

(c) NOTICE OF FURTHER FEDERAL USE.—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.

(d) CONGRESSIONAL DISAPPROVAL.—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.

(e) EXCEPTED CONVEYANCE AUTHORITIES.—The screening requirements of this section shall not apply to real property authorized or required to be conveyed under any of the following provisions of law:

(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.

(5) Title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.).

(6) Any specific provision of law authorizing or requiring the transfer of administrative jurisdiction over a parcel of real property between Federal agencies.

(Added P.L. 105–85, § 2814(a), Nov. 18, 1997, 111 Stat. 1994; amended P.L. 106–65, § 1066(a)(26), Oct. 5, 1999, 113 Stat. 772.)

CHAPTER 160—ENVIRONMENTAL RESTORATION

Sec.
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§ 2701. Environmental restoration program [1, 2]

(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 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.).

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[1] Section 342(b) of the National Defense Authorization Act for Fiscal Year 1991 (P. L. 101–510; 104 Stat. 1537) provides:

(b) POLICIES AND REPORT ON OVERSEAS ENVIRONMENTAL COMPLIANCE.—(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) [omitted].

(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.

[2] Section 3131 of the National Defense Authorization Act for Fiscal Year 2000 (P. L. 106–65; 113 Stat. 925) provides:

Notwithstanding any other provision of law, no funds authorized to be appropriated or otherwise made available by this Act, 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 [Oct. 5, 1999].

(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 hazardous substances, pollutants, and contaminants.

(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 of CERCLA (relating to settlements).

(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 AGENCIES.—

(1) IN GENERAL.—Subject to paragraph (2), the Secretary may enter into agreements on a reimbursable or other basis with any other Federal agency, with any State or local government agency, or with any Indian tribe, to obtain the services of the 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 resulting from the release of a hazardous substance or waste at a facility under the Secretary's jurisdiction.

(2) LIMITATION ON REIMBURSABLE AGREEMENTS.—An agreement with an agency under paragraph (1) may not provide for reimbursement of the agency for regulatory enforcement activities.

(3) 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)).

(e) RESPONSE ACTION CONTRACTORS.—The provisions of section 119 of CERCLA 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 Administration 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 MILLER ACT.—If under the Miller Act (40 U.S.C. 270a et seq.) 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 the Act of April 29, 1941 (40 U.S.C. 270e–270f), the surety bonds shall be issued in accordance with the Miller Act.

(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 or after December 31, 1999.

(2) Subsections (h) and (i) shall not apply to bonds to which section 119(g) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(g)) applies.

(Added P.L. 99–499, § 211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1719 [former § 2701 transferred to § 2721]; amended P.L. 101–189, § 357(a)(2)(B), Nov. 29, 1989, 103 Stat. 1417; P.L. 101–510, § 1481(i)(1), Nov. 5, 1990, 104 Stat. 1708; P.L. 102–190, § 336(a), Dec. 5, 1991, 105 Stat. 1343; P.L. 102–484, §§ 331(b), 1052(35), Oct. 23, 1992, 106 Stat. 2363, 2501; P.L. 103–35, § 201(d)(6), May 31, 1993, 107 Stat. 99; P.L. 103–337, §§ 322, 323, Oct. 5, 1994, 108 Stat. 2711; P.L. 104–106, §§ 321(a)(1), 4321(b)(22), Feb. 10, 1996, 110 Stat. 251, 673; P.L. 104–201, § 329, Sept. 23, 1996, 110 Stat. 2483.)

§ 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. 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, 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 technology demonstration of the Environmental Protection Agency.

(Added P.L. 99–499, § 211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1721.)

§ 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) OBLIGATION OF AUTHORIZED AMOUNTS.—(1) Funds authorized for deposit in an account under subsection (a) may be obligated or expended from the account 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.

(2) 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.

(3) 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.

(4) Funds authorized for deposit in an account under subsection (a) shall remain available until expended. 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).

(c) 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.

(d) 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.

(e) PAYMENTS OF FINES AND PENALTIES.—None of the funds appropriated to the Environmental Restoration Account, Defense, for fiscal years 1995 through 2010, or to any environmental restoration account of a military department for fiscal years 1997 through 2010, 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.

(f) SOLE SOURCE OF FUNDS FOR OPERATION AND MONITORING OF ENVIRONMENTAL REMEDIES.—(1) 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).

(Added P.L. 99–499, § 211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1722; amended P.L. 103–337, § 321, Oct. 5, 1994, 108 Stat. 2710; P.L. 104–106, § 322, Feb. 10, 1996, 110 Stat. 252; P.L. 104–201, § 322(a)(1), Sept. 23, 1996, 110 Stat. 2477; P.L. 106–65, §§ 321, 1066(a)(27), Oct. 5, 1999, 113 Stat. 560, 772; P.L. 106–398, § 1[311, 312], Oct. 30, 2000, 114 Stat. 1654, 1654A–53, 1654A–54.)

§ 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 necesary to endure 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. The Secretary of Defense and the Secretary of Health and Human Services shall enter into a memorandum of understanding regarding 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 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.

(Added P.L. 99–499, § 211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1722; amended P.L. 102–25, § 701(j)(1), April 6, 1991, 105 Stat. 116.)

§ 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.

(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 1990 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).

(h) DEFINITION.—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.

(Added P.L. 99–499, § 211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1724; amended P.L. 103–337, § 326(a)–(c), Oct. 5, 1994, 108 Stat. 2712–2713; P.L. 104–106, § 324(a)–(d)(1), (e), Feb. 10, 1996, 110 Stat. 252; P.L. 104–201, § 322(c), Sept. 23, 1996, 110 Stat. 2479.)

§ 2706. Annual reports to Congress

(a) REPORT ON ENVIRONMENTAL RESTORATION ACTIVITIES.—(1) The Secretary of Defense shall submit to the Congress each year, not later than 45 days after the date on which the President submits to the Congress the budget for a fiscal year, a report on the progress made by the Secretary in carrying out environmental restoration activities at military installations.

(2) Each such report shall include, with respect to environmental restoration activities for each military installation, the following:

(A) A statement of the number of sites at which a hazardous substance has been identified.

(B) A statement of the status of response actions proposed for or initiated at the military installation.

(C) A statement of the total cost estimated for such response actions.

(D) A statement of the amount of funds obligated by the Secretary for such response actions, and the progress made in implementing the response actions during the fiscal year preceding the year in which the report is submitted, including an explanation of—

(i) any cost overruns for such response actions, if the amount of funds obligated for those response actions ex-

ceeds the estimated cost for those response actions by the greater of 15 percent of the estimated cost or $10,000,000; and

(ii) any deviation in the schedule (including a milestone schedule specified in an agreement, order, or mandate) for such response actions of more than 180 days.

(E) A statement of the amount of funds allocated by the Secretary for, and the anticipated progress in implementing, such response actions during the fiscal year in which the report is submitted.

(F) A statement of the amount of funds requested for such response actions for the five fiscal years following the fiscal year in which the report is submitted, and the anticipated progress in implementing such response actions for the fiscal year for which the budget is submitted.

(G) A statement of the total costs incurred for such response actions as of the date of the submission of the report.

(H) A statement of the estimated cost of completing all environmental restoration activities required with respect to the military installation, including, where relevant, the estimated cost of such activities in each of the five fiscal years following the fiscal year in which the report is submitted.

(I) A statement of the estimated schedule for completing all environmental restoration activities at the military installation.

(J) A statement of the activities, if any, including expenditures for administrative expenses and technical assistance under section 2705 of this title, of the technical review committee or restoration advisory board established for the installation under such section during the preceding fiscal year.

(b) REPORT ON ENVIRONMENTAL QUALITY PROGRAMS AND OTHER ENVIRONMENTAL ACTIVITIES.—(1) 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 the progress made in carrying out activities under the environmental quality programs of the Department of Defense and the military departments.

(2) Each report shall include the following:[3]

(A) A description of the environmental quality program of the Department of Defense, and of each of the military depart-

[3] Section 324(c) of the National Defense Authorization Act for Fiscal Year 1997 (P.L. 104–201; 110 Stat. 2480) provides:

(c) REPORT ON COMPLIANCE WITH ANNEX V TO THE CONVENTION.—The Secretary of Defense shall include in each report on environmental compliance activities submitted to Congress under section 2706(b) of title 10, United States Code, the following information:

(1) A list of the ship types, if any, for which the Secretary of the Navy has made the determination referred to in paragraph (2)(C) of section 3(c) of the Act to Prevent Pollution from Ships, as amended by subsection (a)(2) of this section.

(2) A list of ship types which the Secretary of the Navy has determined can comply with Regulation 5 of Annex V to the Convention.

(3) A summary of the progress made by the Navy in implementing the requirements of paragraphs (2) and (3) of such section 3(c), as so amended.

(4) A description of any emerging technologies offering the potential to achieve full compliance with Regulation 5 of Annex V to the Convention.

(5) The amount and nature of the discharges in special areas, not otherwise authorized under the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.), during the preceding year from ships referred to in section 3(b)(1)(A) of such Act owned or operated by the Department of the Navy.

ments, during the period consisting of the four fiscal years preceding the fiscal year in which the report is submitted, the fiscal year in which the report is submitted, and the fiscal year following the fiscal year in which the report is submitted.

(B) For each of the major activities under the environmental quality programs:

(i) A specification of the amount expended, or proposed to be expended, in each fiscal year of the period covered by the report.

(ii) An explanation for any significant change in the aggregate amount to be expended in the fiscal year in which the report is submitted, and in the following fiscal year, when compared with the fiscal year preceding each such fiscal year.

(iii) An assessment of the manner in which the scope of the activities have changed over the course of the period covered by the report.

(C) A summary of the major achievements of the environmental quality programs and of any major problems with the programs.

(D) A list of the planned or ongoing projects necessary to support the environmental quality programs during the period covered by the report, the cost of which has exceeded or is anticipated to exceed $1,500,000. The list and accompanying material shall include the following:

(i) A separate listing of the projects inside the United States and of the projects outside the United States.

(ii) For each project commenced during the first four fiscal years of the period covered by the report (other than a project that was reported as fully executed in the report for a previous fiscal year), a description of—

(I) the amount specified in the initial budget request for the project;

(II) the aggregate amount allocated to the project through the fiscal year preceding the fiscal year for which the report is submitted; and

(III) the aggregate amount obligated for the project through that fiscal year.

(iii) For each project commenced or to be commenced in the fiscal year in which the report is submitted, a description of—

(I) the amount specified for the project in the budget for the fiscal year; and

(II) the amount allocated to the project in the fiscal year.

(iv) For each project to be commenced in the last fiscal year of the period, a description of the amount, if any, specified for the project in the budget for the fiscal year.

(v) If the anticipated aggregate cost of any project covered by the report will exceed by more than 25 percent the amount specified in the initial budget request for such project, a justification for that variance.

(E) A statement of the fines and penalties imposed or assessed against the Department of Defense and the military

departments under Federal, State, or local environmental laws during the fiscal year in which the report is submitted and the four preceding fiscal years, which shall set forth the following:

(i) Each Federal environmental statute under which a fine or penalty was imposed or assessed during each such fiscal year.

(ii) With respect to each such Federal statute—

(I) the aggregate amount of fines and penalties imposed under the statute during each such fiscal year;

(II) the aggregate amount of fines and penalties paid under the statute during each such fiscal year; and

(III) the total amount required during such fiscal years for supplemental environmental projects in lieu of the payment of a fine or penalty under the statute and the extent to which the cost of such projects during such fiscal years has exceeded the original amount of the fine or penalty.

(iii) A trend analysis of fines and penalties imposed or assessed during each such fiscal year for military installations inside and outside the United States.

(F) A statement of the amounts expended, and anticipated to be expended, during the period covered by the report for any activities overseas relating to the environment, including amounts for activities relating to environmental remediation, compliance, conservation, pollution prevention, and environmental technology and amounts for conferences, meetings, and studies for pilot programs, and for travel related to such activities.

(c) REPORT ON CONTRACTOR REIMBURSEMENT COSTS.—(1) The Secretary of Defense shall submit to the Congress each year, not later than 45 days after the date on which the President submits to the Congress the budget for a fiscal year, a report on payments made by the Secretary to defense contractors for the costs of environmental response actions.

(2) Each such report shall include, for the fiscal year preceding the year in which the report is submitted, the following:

(A) An estimate of the payments made by the Secretary to any defense contractor (other than a response action contractor) for the costs of environmental response actions at facilities owned or operated by the defense contractor or at which the defense contractor is liable in whole or in part for the environmental response action.

(B) A statement of the amount and current status of any pending requests by any defense contractor (other than a response action contractor) for payment of the costs of environmental response actions at facilities owned or operated by the defense contractor or at which the defense contractor is liable in whole or in part for the environmental response action.

(d) REPORT ON ENVIRONMENTAL TECHNOLOGY PROGRAM.—(1) 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 the progress

made by the Department of Defense 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.

(2) Each such report shall include, with respect to each project under the environmental technology program of the Department of Defense, the following:

(A) The performance objectives established for the project for the fiscal year and an assessment of the performance achieved with respect to the project in light of performance indicators for the project.

(B) A description of the extent to which the project met the performance objectives established for the project for the fiscal year.

(C) If a project did not meet the performance objectives for the project for the fiscal year—

(i) an explanation for the failure of the project to meet the performance objectives; and

(ii) a modified schedule for meeting the performance objectives or, if a performance objective is determined to be impracticable or infeasible to meet, a statement of alternative actions to be taken with respect to the project.

(e) DEFINITIONS.—In this section:

(1) The term "defense contractor"—

(A) means an entity (other than an entity referred to in subparagraph (B)) that is one of the top 20 entities receiving the largest dollar volume of prime contract awards by the Department of Defense during the fiscal year covered by the report; and

(B) does not include small business concerns, commercial companies (or segments of commercial companies) providing commercial items to the Department of Defense.

(2) The term "military installation" has the meaning given such term in section 2687(e) of this title, except that such term does not include a homeport facility for any ship and includes—

(A) each facility or site owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the Secretary of Defense;

(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; and

(C) each facility or site at which the Secretary is conducting environmental restoration activities.

(3) The term "response action contractor" has the meaning given such term in section 119(e)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(e)(2)).

(4) The term "environmental quality program" means a program of activities relating to environmental compliance, conservation, pollution prevention, and such other activities relating to environmental quality as the Secretary concerned may designate for purposes of the program.

(5) The term "major activities", with respect to an environmental quality program, means the following activities under the program:

(A) Environmental compliance activities.

(B) Conservation activities.

(C) Pollution prevention activities.

(Added P.L. 99–499, § 211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1724; amended P.L. 101–189, § 357(a)(1), (2)(A), Nov. 29, 1989, 103 Stat. 1426, 1427; P.L. 101–510, §§ 341, 342, Nov. 5, 1990, 104 Stat. 1536, 1537; P.L. 103–160, § 1001(a)–(d), Nov. 30, 1993, 107 Stat. 1742; P.L. 104–106, § 324(f), Feb. 10, 1996, 110 Stat. 254; P.L. 104–201, § 321, Sept. 23, 1996, 110 Stat. 2477; P.L. 105–85, §§ 344(a), 345, Nov. 18, 1997, 111 Stat. 1688; P.L. 105–261, § 325, Oct. 17, 1998, 112 Stat. 1965; P.L. 106–65, §§ 322, 323(c)(2), Oct. 5, 1999, 113 Stat. 560, 563.)

§ 2707. Definitions

In this chapter:

(1) The terms "environment", "facility", "hazardous substance", "person", "release", "removal", "response", "disposal", and "hazardous waste" have the meanings given those terms in section 101 of CERCLA (42 U.S.C. 9601).

(2) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(Added P.L. 99–449, § 211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1725.)

§ 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 by P.L. 102–190, § 331(a)(1), Dec. 5, 1991, 105 Stat. 1339; amended P.L. 102–484, §§ 321, 1052(36), Oct. 23, 1992, 106 Stat. 2365, 2501; P.L. 103–160, § 1004, Nov. 30, 1993, 107 Stat. 1748.)

§ 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 environ-

mental 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 by P.L. 106–65, § 323(b)(1), Oct. 5, 1999, 113 Stat. 562.)

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.

§ 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, § 2701, ch. 1041, 70A Stat. 152; redesignated § 2721, Oct. 17, 1986, P.L. 99–499, § 211(a)(1)(A), 100 Stat. 1719; amended Nov. 5, 1990, P.L. 101–510, § 1322(a)(12), 104 Stat. 1671; Dec. 5, 1991, P.L. 102–190, §§ 347(b), 1061(a)(17)(A), 105 Stat. 1347, 1473.)

§ 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 of title 18.

(Added P.L. 100–456, § 344(a), Sept. 29, 1988, 102 Stat 1962.)

§ 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 Central 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. 413).

(Added P.L. 106–65, § 1042(a), Oct. 5, 1999, 113 Stat. 759.)

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.
2734. Property loss; personal injury or death: incident to noncombat activities of the armed forces; foreign countries.
2734a. Property loss; personal injury or death: incident to noncombat activities of armed forces in foreign countries; international agreements.
2734b. Property loss; personal injury or death: incident to activities of armed forces of foreign countries in United States; international agreements.
2735. Settlement: final and conclusive.
2736. Property loss; personal injury or death: advance payment.
2737. Property loss; personal injury or death: incident to use of property of the United States and not cognizable under other law.
2738. Property loss: reimbursement of members for certain losses of household effects caused by hostile action.
2739. Amounts recovered from third parties for loss or damage to personal property shipped or stored at Government expense: crediting to appropriations.

§ 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.)

§ 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 P.L. 101–510, § 1481(j)(1), Nov. 5, 1990, 104 Stat. 1708 [prior § 2732 repealed Aug. 31, 1964].)

§ 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 set-

tle, 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 meritious 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; Aug. 23, 1958, P.L. 85–729, § 1, 72 Stat. 813; Sept. 2, 1958, P.L. 85–861, § 1(54), 72 Stat. 1461; Nov. 2, 1966, P.L. 89–718, § 8(a), 80 Stat. 1117; Sept. 26, 1968, P.L. 90–522, 82 Stat. 875; Sept. 26, 1968, P.L. 90–525, §§ 1, 3–5, 82 Stat. 877, 878; July 8, 1970, P.L. 91–312, § 2, 84 Stat. 412; July 8, 1974, P.L. 93–336, § 1, 88 Stat. 291; Dec. 12, 1980, P.L. 96–513, § 511(94), 94 Stat. 2928; Oct. 30, 1984, P.L. 98–564, § 1, 98 Stat. 2918; Oct. 19, 1996, P.L. 104–316, § 202(e), 110 Stat. 3842.)

§ 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 Territories, Commonwealths, 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 be 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 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 Transportation 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; Sept. 2, 1958, P.L. 85–861, § 1(55), 72 Stat. 1461; Sept. 1, 1959, P.L. 86–223, § 1(1), 73 Stat. 453; Apr. 8, 1960, P.L. 86–411, 74 Stat. 16; Sept. 26, 1968, P.L. 90–521, §§ 1, 3, 82 Stat. 874; July 8, 1970, P.L. 91–312, § 1, 84 Stat. 412; July 8, 1974, P.L. 93–336, § 2, 88 Stat. 292; Dec. 12, 1980, P.L. 96–513, § 511(95), 94 Stat. 2928; Oct. 30, 1984, P.L. 98–564, § 2, 98 Stat. 2918; Nov. 5, 1990, P.L. 101–510, § 1481(j)(4)(A), 104 Stat. 1709; P.L. 104–316, § 202(e), Oct. 19, 1996; 110 Stat. 3842.)

§ 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 Transportation 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 Transportation 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 Transportation 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 Transportation.

(Added P.L. 87–651, § 113(a), Sept. 7, 1962, 76 Stat. 512; amended P.L. 90–521, § 4, Sept. 26, 1968, 82 Stat. 874; P.L. 94–390, § 1(1), Aug. 19, 1976, 90 Stat. 1191; P.L. 98–525, § 1405(42), Oct. 19, 1984, 98 Stat. 2624; P.L. 101–510, § 1481(j)(4)(B), Nov. 5, 1990, 104 Stat. 1709.)

§ 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 P.L. 87–651, § 113(a), Sept. 7, 1962, 76 Stat. 512; amended P.L. 94–390, § 1(2), Aug. 19, 1976, 90 Stat. 1191; P.L. 101–510, § 1481(j)(4)(C), Nov. 5, 1990, 104 Stat. 1709.)

§ 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; Aug. 31, 1964, P.L. 88–558, § 5(1), 78 Stat. 768; revised in its entirety P.L. 92–413, Aug. 29, 1972, 86 Stat. 649.)

§ 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 P.L. 87–212, § 1(1), Sept. 8, 1961, 75 Stat. 448; amended P.L. 90–521, § 2, Sept. 26, 1968, 82 Stat. 874; P.L. 98–564, § 3, Oct. 30, 1984, 98 Stat. 2919; P.L. 100–456, § 735, Sept. 29, 1988, 102 Stat. 2005.)

§ 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 as § 2736, P.L. 87–769, § 1(1)(A), Oct. 9, 1962, 76 Stat. 767; redesignated § 2737 P.L. 89–718, § 21(a), Nov. 2, 1966, 80 Stat. 1118.)

§ 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 P.L. 103–337, § 557(a), Oct. 5, 1994, 108 Stat. 2775.)

§ 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 P.L. 105–261, § 1010(a), Oct. 17, 1998, 112 Stat. 2117.)

CHAPTER 165—ACCOUNTABILITY AND RESPONSIBILITY

Sec.
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§ 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; Sept. 2, 1958, P.L. 85–861, § 1(56), 72 Stat. 1461; July 12, 1960, P.L. 86–641, 74 Stat. 473; Nov. 2, 1966, P.L. 89–718, § 8(a), 80 Stat. 1117; Dec. 12, 1980, P.L. 96–513, § 511(97), 94 Stat. 2928; Nov. 29, 1989, P.L. 101–189, §§ 342(a)(2), 1603(a)(2), 103 Stat. 1420, 1598; Nov. 30, 1993, P.L. 103–160, § 1182(a)(11), 107 Stat. 1771; Oct. 19, 1996, P.L. 104–316, § 202(f), 110 Stat. 3842.)

§ 2772. Share of fines and forfeitures to benefit Armed Forces Retirement Home

(a) DEPOSIT REQUIRED.—The Secretary of the military department concerned 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 Armed Forces Retirement Home Board 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.

(c) APPLICATION TO COAST GUARD.—In this section, the term "armed forces" does not include the Coast Guard when it is not operating as a service in the Navy.

(Added P.L. 101–189, § 342(a)(1), Nov. 29, 1989, 103 Stat. 1419 [prior § 2772 repealed Sept. 7, 1962]; amended P.L. 101–510, § 1533(a)(3), Nov. 5, 1990, 104 Stat. 1733.)

§ 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 P.L. 87–480, § 1(1)(A), June 8, 1962, 76 Stat. 94; amended P.L. 97–258, § 2(b)(7)(B), Sept. 13, 1982, 96 Stat. 1054; P.L. 104–106, § 913(a)(2), Feb. 10, 1996, 110 Stat. 410.)

§ 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 $1,500; 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 three 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 re-

spect 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 P.L. 92–453, § 1(1), Oct. 2, 1972, 86 Stat. 758; amended P.L. 96–513, § 511(98), Dec. 12, 1980, 94 Stat. 2928; P.L. 99–224, § 2(a), Dec. 28, 1985, 99 Stat. 1741; P.L. 100–26, § 7(j)(7), April 21, 1987, 101 Stat. 283; P.L. 102–190, § 657(b) Dec. 5, 1991, 105 Stat. 1393; P.L. 104–316, § 105(b), Oct. 19, 1996, 110 Stat. 3830.)

§ 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 personal 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 Transportation 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 Transportation 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 Transportation 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 personel 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 Transportation 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 P.L. 96–418, § 506(a), Oct. 10, 1980, 94 Stat. 1765; amended P.L. 97–214, § 10(a)(6), July 12, 1982, 96 Stat. 175; P.L. 98–407, § 801, Aug. 28, 1984, 98 Stat. 1517; P.L. 99–167, § 802, Dec. 3, 1985, 99 Stat. 986; P.L. 99–661, § 1343(a)(19), Nov. 14, 1986, 100 Stat. 3993.)

§ 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 P.L. 97–258, § 2(b)(8)(B), Sept. 13, 1982, 96 Stat. 1055; amended P.L. 98–525, § 1405(43), Oct. 19, 1984, 98 Stat. 2625.)

§ 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 P.L. 97–258, § 2(b)(8)(B), Sept. 13, 1982, 96 Stat. 1055; amended P.L. 98–525, § 1405(43), Oct. 19, 1984, 98 Stat. 2625; P.L. 104–316, § 105(c), Oct. 19, 1996, 110 Stat. 3830.)

[§ 2778. Repealed. P.L. 104–316, § 105(d), Oct. 19, 1996, 110 Stat. 3830]

§ 2779. Use of funds because of fluctuations in currency exchange rates of foreign countries

(a) TRANSFERS BACK TO FOREIGN CURRENCY FLUCTUATIONS APPROPRIATION.—(1) Funds transferred 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 P.L. 97–258, § 2(b)(8)(B), Sept. 13, 1982, 96 Stat. 1056; amended P.L. 101–510, § 1301(15), Nov. 5, 1990, 104 Stat. 1668; P.L. 104–106, § 911(a)–(c), (e), Feb. 10, 1996, 110 Stat. 406.)

§ 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) The Secretary 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.

(Added P.L. 99–661, § 1309(a), Nov. 14, 1986, 100 Stat. 3982; amended P.L. 104–316, § 115(g)(2)(C), Oct. 19, 1996; 110 Stat. 3835.)

§ 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 acordance with law.

(Added P.L. 100–370, § 1(m)(1), July 19, 1988, 102 Stat. 850.)

§ 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 P.L. 104–106, § 2821(a), Feb. 10, 1996, 110 Stat. 556 [former 2782 repealed by § 1405(c)(1) of P.L. 101–510].)

§ 2783. Nonappropriated fund instrumentalities: financial management and use of nonappropriated funds [1]

(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).

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[1] Section 361 of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 102–484; 106 Stat. 2379) provides:

SEC. 361. STANDARDIZATION OF CERTAIN PROGRAMS AND ACTIVITIES OF MILITARY EXCHANGES.

(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) [Obsolete report requirement omitted].

(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 as § 2490a by P.L. 102–484, § 362(a), Oct. 23, 1992, 106 Stat. 2379; transferred, redesignated § 2783, and amended P.L. 103–160, § 1182(a)(8)(A), Nov. 30, 1993, 107 Stat. 1771.)

§ 2784. Management of credit cards

(a) MANAGEMENT OF CREDIT CARDS.—The Secretary of Defense, acting through the Under Secretary of Defense (Comptroller), shall prescribe regulations governing the use and control of all credit 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 credit 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 credit 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 credit card holder.

(2) That the holder of a credit card and each official with authority to authorize expenditures charged to the credit card are responsible for—

(A) reconciling the charges appearing on each statement of account for that credit 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.

(3) That any disputed credit card charge, and any discrepancy between a receipt and other supporting documentation and the credit card statement of account, is resolved in the manner prescribed in the applicable Government-wide credit card contract entered into by the Administrator of General Services.

(4) That payments on credit card accounts are made promptly within prescribed deadlines to avoid interest penalties.

(5) That rebates and refunds based on prompt payment on credit card accounts are properly recorded.

(6) That records of each credit card transaction (including records on associated contracts, reports, accounts, and invoices) are retained in accordance with standard Government policies on the disposition of records.

(Added P.L. 106–65, § 933(a)(1), Oct. 5, 1999, 113 Stat. 728.)

§ 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 P.L. 106–65, § 933(a)(1), Oct. 5, 1999, 113 Stat. 729.)

§ 2786. Department of Defense payments by electronic transfers of funds: exercise of authority for waivers [2]

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 P.L. 106–65, § 1008(a)(1), Oct. 5, 1999, 113 Stat. 737.)

[2] Section 1008(a)(3) of the National Defense Authorization Act for Fiscal Year 2000 (P.L. 106–65; 113 Stat. 738) provides:

(3) Any waiver in effect on [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).

[CHAPTER 167—REPEALED]

Sec.
[2791. Repealed.]
[2792 to 2796. Transferred.]
[2797. Repealed.]
[2798. Transferred.]

[§ 2791. Repealed. P.L. 104–201, § 1121(b), Sept. 23, 1996, 110 Stat. 2687]

[§§ 2792 to 2796. Transferred to §§ 451 to 455]

[§ 2797. Repealed. P.L. 104–201, § 1121(b), Sept. 23, 1996, 110 Stat. 2687]

[§ 2798. Transferred to § 456]

CHAPTER 169—MILITARY CONSTRUCTION AND MILITARY FAMILY HOUSING

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SUBCHAPTER I—MILITARY CONSTRUCTION

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§ 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.

(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:

(1) The term "facility" means a building, structure, or other improvement to real property.

(2) 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.

(3) The term "Secretary concerned" includes the Secretary of Defense with respect to matters concerning the Defense Agencies.

(4) The term "appropriate committees of Congress" 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 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.

(d) This chapter (other than sections 2830 and 2835) does not apply to the Coast Guard or to civil works projects of the Army Corps of Engineers.

(Added P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 153; amended P.L. 100–26, § 7(k)(2), April 21, 1987, 101 Stat. 284; P.L. 100–180, §§ 632(b)(1), 1231(15), 2306(b), Dec. 4, 1987, 101 Stat. 1105, 1160, 1216; P.L. 102–484, § 1052(37), Oct. 23, 1992, 106 Stat. 2501; P.L. 102–496, § 403(b), Oct. 24, 1992, 106 Stat. 3185; P.L. 104–106, § 1502(a)(10), Feb. 10, 1996, 110 Stat. 503; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 2802. Military construction projects

(a) The Secretary of Defense and the Secretaries of the military departments may carry out such military construction projects as are authorized by law.[1]

(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.

(Added P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 154.)

§ 2803. Emergency construction

(a) Subject to subsections (b) and (c), the Secretary concerned may carry out a military construction project not otherwise author-

[1] Section 2868 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (P.L. 102–190; 105 Stat. 1562) provides:

SEC. 2868. REPORTS RELATING TO MILITARY CONSTRUCTION FOR FACILITIES SUPPORTING NEW WEAPON SYSTEMS.

(a) REQUIREMENT.—The Secretary of Defense shall submit to Congress with the budget submitted under section 1105 of title 31, United States Code, for the fiscal year in which the first construction of a facility for the permanent basing of a new weapon system is to be authorized a report describing—

(1) the site or sites selected or planned for permanent basing of the planned force of that weapon system;

(2) the rationale for selecting such site or sites; and

(3) the military construction activities proposed for each such site.

(b) NEW WEAPON SYSTEM DEFINED.—For purposes of this section, the term "new weapon system" means any military aircraft or major naval combatant vessel for which a complete permanent basing plan has not been publicly announced before [Dec. 5, 1991].

ized 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 21-day period beginning on the date the notification is received by such committees.

(c)(1) The maximum amount that the Secretary concerned may obligate in any fiscal year under this section is $30,000,000.

(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 P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 154; amended P.L. 102–190, §§ 2803, 2870(2), Dec. 5, 1991, 105 Stat. 1537, 1562.)

§ 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 21-day period beginning on the date the notification is received by such committees.

(Added P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 155; amended P.L. 102–190, § 2870(3), Dec. 5, 1991, 105 Stat. 1563.)

§ 2805. Unspecified minor construction

(a)(1) Except as provided in paragraph (2), 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. An unspecified minor military construction project is a military construction project that has an approved cost equal to or less than $1,500,000. 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 $3,000,000.

(2) 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.

(b)(1) An unspecified minor military construction project costing more than $500,000 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.

(c)(1) Except as provided in paragraphs (2) and (3), 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—

(A) $1,000,000, 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) $500,000, in the case of any other unspecified minor military construction project.

(2) 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.

(3) 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.

(d) Military family housing projects for construction of new housing units may not be carried out under the authority of this section.

(Added P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 155; amended P.L. 99–167, § 809, Dec. 3, 1985, 99 Stat. 989; P.L. 99–661, § 2702(a), Nov. 14, 1986, 100 Stat. 4040; P.L. 100–180, § 2310, Dec. 4, 1987, 101 Stat. 1217; P.L. 101–510, § 1301(16), Nov. 5, 1990, 104 Stat. 1668; P.L. 102–190, §§ 2807, 2870(4), Dec. 5, 1991 105 Stat. 1540, 1563; P.L. 104–106, §§ 2811(a), 2812, Feb. 10, 1996, 110 Stat. 552; P.L. 104–201, § 2801(a), Sept. 23, 1996, 110 Stat. 2787; P.L. 105–85, § 2801, Nov. 18, 1997, 111 Stat. 1989.)

§ 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)(2) 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.

(Added P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 156; amended P.L. 97–321, § 805(b)(1), Oct. 15, 1982, 96 Stat. 1573; P.L. 99–661, § 2503(a), Nov. 14, 1986, 100 Stat. 4039; P.L. 100–26, § 7(f)(1), April 21, 1987, 101 Stat. 281; P.L. 102–190, § 2870(5), Dec. 5, 1991, 105 Stat. 1563; P.L. 104–201, § 2802(a), (c)(1), Sept. 23, 1996, 110 Stat. 2787.)

§ 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 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 $500,000, the Secretary concerned shall notify the appropriate committees of Congress of the scope of the proposed project and the estimated cost of such services not less than 21 days before the initial obligation of funds for such services.

(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.

(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 P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 156; amended P.L. 98–115, § 804, Oct. 11, 1983, 97 Stat. 785; P.L. 99–661, §§ 2702(b), 2712(a), Nov. 14, 1986, 100 Stat. 4040, 4041; P.L. 102–190, § 2870(6), Dec. 5, 1991, 105 Stat. 1563; P.L. 105–261, § 2801, Oct. 17, 1998, 112 Stat. 2202.)

§ 2808. Construction authority in the event of a declaration of war or national emergency [2]

(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 P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 157.)

§ 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] By Executive Order 12734, dated Nov. 14, 1990, the emergency construction authority of section 2808 was invoked and made available to the Secretary of Defense and, at the discretion of the Secretary of Defense, to the Secretaries of the military departments.

(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 calendar days has expired following the date on which the justification and the economic analysis are received by the committees.

(Added P.L. 99–167, § 811(a), Dec. 3, 1985, 99 Stat. 990; amended P.L. 99–661, §§ 1343(a)(20), 2711, Nov. 14, 1986, 100 Stat. 3994, 4041; P.L. 100–180, § 2302(a), (b), Dec. 4, 1987, 101 Stat. 1215; P.L. 100–456, § 2801, Sept. 29, 1988, 102 Stat. 2115; P.L. 101–189, § 2803, Nov. 29, 1989, 103 Stat. 1647; P.L. 102–190, § 2805(a)(1), Dec. 5, 1991, 105 Stat. 1537.)

§ 2810. Construction projects for environmental response actions

(a) Subject to subsection (b), 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 the project is necessary to carry out a response action under chapter 160 of this title or under the Comprehensive Environ-

mental Reponse, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

(b)(1) 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—

(A) the justification for the project and the current estimate of the cost of the project; and

(B) the justification for carrying out the project under this section.

(2) 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.

(c) In this section, the term "response action" has the meaning given that term in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

(Added P.L. 99–499, § 211(b)(1), Oct. 17, 1986, 100 Stat. 1725.)

§ 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 $5,000,000 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 $10,000,000, 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; and

(2) the justification for carrying out the project under this section.

(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 as § 2810 P.L. 99–661, § 315(a), Nov. 14, 1986, 100 Stat. 3854; redesignated § 2811 P.L. 100–26, § 7(e)(3), April 21, 1987, 101 Stat. 281; amended P.L. 103–337, § 2801(a), Oct. 5, 1994, 108 Stat. 3050; P.L. 105–85, § 2802, Nov. 18, 1997, 111 Stat. 1990.)

§ 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.

(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 P.L. 101–189, § 2809(a), Nov. 29, 1989, 103 Stat. 1649; amended P.L. 101–510, § 2864, Nov. 5, 1990, 104 Stat. 1806.)

§ 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 end of the 30-day period beginning on the date 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.

(Added P.L. 103–160, § 2805(a)(1), Nov. 30, 1993, 107 Stat. 1886; P.L. 104–106, § 1502(a)(25), Feb. 10, 1996, 110 Stat. 506.)

§ 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 (in-

cluding 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.

(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 Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411).

(3) Sections 202 and 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483, 484).

(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 P.L. 106–65, § 2802(a)(1), Oct. 5, 1999, 113 Stat. 845; amended P.L. 106–398, § 1[1087(a)(16)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291.)

§ 2815. Joint use military construction projects: annual evaluation

(a) JOINT USE MILITARY CONSTRUCTION PROJECT DEFINED.—In this section, the term "joint use military construction project" means a military construction project for a facility intended to be used by—

(1) both the active and a reserve component of a single armed force; or

(2) two or more components (whether active or reserve components) of the armed forces.

(b) ANNUAL EVALUATION.—In the case of the budget submitted under section 1105 of title 31 for fiscal year 2003 and each fiscal year thereafter, the Secretary of Defense shall include in the budget justification materials submitted to Congress in support of the budget a certification by each Secretary concerned that, in evaluating military construction projects for inclusion in the budget for that fiscal year, the Secretary concerned evaluated the feasibility of carrying out the projects as joint use military construction projects.

(Added P.L. 106–398, § 1[2801(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–412.)

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.
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2837. Limited partnerships with private developers of housing.

§ 2821. Requirement for authorization of appropriations for construction and acquisition of military family housing [3, 4]

(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.

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[3] Section 803 of the Military Construction Authorization Act, 1984 (P.L. 98–115), as amended, provides:

SEC. 803. (a) The Secretary of Defense shall ensure that any contract entered into for the construction of military family housing for the Department of Defense in a foreign country shall require the use of manufactured or factory-built housing which is fabricated in the United States by a United States contractor.

(b) The Secretary of Defense may waive subsection (a) with respect to not more than 10 percent of the total number of military family housing units authorized to be constructed in foreign countries in any year if—

(1) the Secretary determines that with respect to such units compliance with the requirement in such subsection is infeasible; and

(2) the Secretary—

(A) notifies the appropriate committees of the Congress in writing of his intention to waive such requirements and includes in the notification the jurisdiction for the waiver, and

(B) a period of 21 days has elapsed after the receipt by such committees of the notice.

(c) This section shall apply to any contract entered into after [Oct. 11, 1983].

[4] Section 127 of the Military Construction Appropriations Act, 2001 (div. A of P.L. 106–246; 114 Stat. 518), provides:

SEC. 127. Notwithstanding this or any other provision of law, funds appropriated in Military Construction Appropriations Acts for operations and maintenance of family housing shall be the exclusive source of funds for repair and maintenance of all family housing units, including flag and general officer quarters: *Provided*, That not more than $25,000 per unit may be spent annually for the maintenance and repair of any general or flag officer quarters without 30 days advance prior notification of the appropriate committees of Congress: *Provided further*, That the Under Secretary of Defense (Comptroller) is to report annually to the Committees on Appropriations all operations and maintenance expenditures for each individual flag and general officer quarters for the prior fiscal year.

(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 P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 157; amended P.L. 99–145, § 1303(a)(18), Nov. 8, 1985, 99 Stat. 739; P.L. 99–167, § 804(a), Dec. 3, 1985, 99 Stat. 987; P.L. 101–189, § 2801, Nov. 29, 1989, 103 Stat. 1646.)

§ 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.

(Added P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 158; amended P.L. 98–525, § 1405(44), Oct. 19, 1984, 98 Stat. 2625; P.L. 100–180, § 2308, Dec. 4, 1987, 101 Stat. 1216; P.L. 101–510, § 1301(17), Nov. 5, 1990, 104 Stat. 1668; P.L. 102–25, § 701(j)(9), April 6, 1991, 105 Stat. 116; P.L. 102–484, § 2802(b), Oct. 23, 1992, 106 Stat. 2606.)

§ 2823. Determination of availability of suitable alternative housing for acquisition in lieu of construction of new family housing

(a) Before entering into a contract for the construction of family housing units authorized by law to be constructed at a location within the United States, the Secretary concerned shall consult in writing with the Secretary of Housing and Urban Development as to the availability of suitable alternative housing at such location. The Secretary of Housing and Urban Development shall advise the Secretary concerned in writing as to the availability of such housing. If the Secretary of Housing and Urban Development does not advise the Secretary concerned as to the availability of such housing within 21 days of the date on which the request for such advice is made, the Secretary concerned may enter into a contract for the proposed construction.

(b) If the Secretary concerned and the Secretary of Housing and Urban Development agree that suitable alternative housing is available at a location at which military family housing units are authorized to be constructed, the Secretary may not proceed with such construction.

(c) The Secretary of Defense shall prescribe regulations to define what constitutes suitable alternative housing for the purposes of this section.

(Added P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 158; amended P.L. 105–85, § 1041(b), Nov. 18, 1997, 111 Stat. 1885.)

§ 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 concerned 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 P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 159; amended P.L. 104–106, § 2813, Feb. 10, 1996, 110 Stat. 553; P.L. 104–201, § 1074(a)(17), Sept. 23, 1996, 110 Stat. 2659.)

§ 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 (i) 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, and (ii) a period of 21 days elapses after the date on which the appropriate committees of Con-

gress receive a notice from such Secretary of the proposed waiver, together with an economic analysis demonstrating that the improvement will be cost effective.

(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;

(B) the Secretary determines that the improvement project is no longer cost-effective after a review of post-design or bid cost estimates;

(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).

(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 P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 159; amended P.L. 99–661, § 2702(c), Nov. 14, 1986, 100 Stat. 4040; P.L. 100–26, § 7(k)(3), April 21, 1987, 101 Stat. 284; P.L. 100–180, § 2305, Dec. 4, 1987, 101 Stat. 1215; P.L. 101–189, § 2804, Nov. 29, 1989, 103 Stat. 1647; P.L. 101–510, § 2812, Nov. 5, 1990, 104 Stat. 1788; P.L. 102–484, § 2802(a), Oct. 23, 1992, 106 Stat. 2605; P.L. 103–337, § 2802, Oct. 5, 1994, 108 Stat. 3050; P.L. 104–106, § 1502(a)(26), Feb. 10, 1996, 110 Stat. 506; P.L. 104–201, § 2803, Sept. 23, 1996, 110 Stat. 2788; P.L. 106–398, § 1[2802], Oct. 30, 2000, 114 Stat. 1654, 1654A–413.)

§ 2826. Limitations on space by pay grade [5]

(a) In the construction, acquisition, and improvement of military family housing units, the following are the space limitations for the applicable numbers of bedrooms permitted for each pay grade:

Pay grade	Number of bedrooms	Net floor area (square feet)
O–7 and above	4	2,100
O–6	4	1,700
O–4 and O–5	4	1,550
	3	1,400
O–1 through O–3; W–1 through W–4; and E–7 through E–9	5	1,550
	4	1,450
	3	1,350
	2	950
E–1 through E–6	5	1,550

[5] Effective October 1, 2001, pursuant to section 2803(a)(1) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654A–413), section 2826 is amended to read as follows:

§ 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.

Section 2803(b) of that Act provides:

(b) EFFECTIVE DATE.—(1) The amendments made by subsection (a) 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.

Pay grade	Number of bedrooms	Net floor area (square feet)
	4	1,350
	3	1,200
	2	950

(b) The applicable maximum net floor area prescribed by subsection (a) may be increased by 10 percent for the housing unit of an officer holding a special command position (as designated by the Secretary of Defense), for the housing unit of the commanding officer of a military installation, and for the senior noncommissioned officer of a military installation.

(c) The maximum net floor area prescribed by subsection (a) may be increased in any case by 5 percent if the Secretary concerned determines that the increase is in the best interest of the Government (1) to permit award of a turnkey construction contract to the contractor offering the most satisfactory proposal, or (2) to permit purchase, lease, or conversion of housing units. An increase in the maximum net floor area of a housing unit under subsection (b) when combined with an increase in the maximum net floor area of such unit under this subsection may not exceed 10 percent of the otherwise applicable limitation prescribed by subsection (a).

(d) The applicable maximum net floor area prescribed by subsection (a) may be increased by 300 square feet for a family housing unit in a location where harsh climatological conditions severely restrict outdoor activity for a significant part of each year, as determined by the Secretary concerned pursuant to regulations prescribed by the Secretary of Defense. The regulations shall apply uniformly to the armed forces.

(e) In the case of the acquisition by purchase of military family housing units for members of the armed forces in pay grades below pay grade O–6, the applicable maximum net floor area prescribed by subsection (a) may be increased by 20 percent if the Secretary concerned determines that the purchase of larger units is cost effective when compared to available units within the space limitations specified in that subsection.

(f)(1) The Secretary concerned may waive the provisions of subsection (a) with respect to a family housing unit leased in a foreign country if a suitable family housing unit within the applicable maximum net floor area prescribed by such subsection cannot be obtained.

(2) Subsection (a) does not apply to family housing units in foreign countries constructed or acquired by the Secretary of State for occupancy by members of the armed forces.

(g) The maximum net floor areas prescribed by this section apply to family housing provided to civilian personnel based upon civilian pay scale comparability with military pay grades, as determined by the Secretary of Defense.

(h) In this section, the term "net floor area" means the total number of square feet of the floor space inside the exterior walls of a structure, 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.

(i)(1) The Secretary concerned may waive the provisions of subsection (a) with respect to military family housing units constructed, acquired, or improved during the five-year period beginning on February 10, 1996.

(2) The total number of military family housing units constructed, acquired, or improved during any fiscal year in the period referred to in paragraph (1) shall be the total number of such units authorized by law for that fiscal year.

(Added P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 159; amended P.L. 100–26, § 7(k)(3), April 21, 1987, 101 Stat. 284; P.L. 102–190, § 2808, Dec. 5, 1991, 105 Stat. 1540; P.L. 104–106, §§ 2814, 2815, Feb. 10, 1996, 110 Stat. 553; P.L. 104–201, § 1074(a)(17), Sept. 23, 1996, 110 Stat. 2659; P.L. 106–398, § 1[2803(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–413.)

§ 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.

(Added P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 160.)

§ 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) and (4), 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 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.

(5) At the beginning of each fiscal year, the Secretary concerned shall adjust the maximum lease amount provided for leases under paragraphs (2) and (3) 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.

(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 ten years, 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 Secretary of the Navy may lease not more than 2,000 units of family housing in Italy, and the Secretary of the Army may lease not more than 500 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 800 units of family housing in Korea subject to that maximum lease amount.

(4) The Secretary concerned shall adjust the maximum lease amounts provided for under paragraphs (1), (2), and (3) 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.

(5) The maximum number of family housing units that may be leased in foreign countries under this section at any one time is 53,000.

(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 $500,000 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.

(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 P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 161; amended P.L. 97–321, § 805(b)(2), Oct. 15, 1982, 96 Stat. 1573; P.L. 98–115, § 801, Oct. 11, 1983, 97 Stat. 782; P.L. 98–407, § 806, Aug. 28, 1984, 98 Stat. 1521; P.L. 99–167, §§ 801(b), 803, 805, Dec. 3, 1985, 99 Stat. 985, 987, 988; P.L. 99–661, §§ 2702(d)–(g), 2713(b), 2714, Nov. 14, 1986, 100 Stat. 4040, 4042; P.L. 100–26, § 7(j)(8), April 21, 1987, 101 Stat. 283; P.L. 100–180, §§ 2306(a), 2309, 2311, Dec. 4, 1987, 101 Stat. 1216, 1217; P.L. 100–370, § 1(l)(2), July 19, 1988, 102 Stat. 849; P.L. 100–456, § 2802, Sept. 29, 1988, 102 Stat. 2115; P.L. 101–189, §§ 2802, 2805, Nov. 29, 1989, 103 Stat. 1646, 1647; P.L. 102–190, § 2806(b), Dec. 5, 1991, 105 Stat. 1540; P.L. 103–35, § 201(d)(7), May 31, 1993, 107 Stat. 99; P.L. 103–160, § 2801, Nov. 30, 1993, 107 Stat. 1883; P.L. 104–106, § 2816, Feb. 10, 1996, 110 Stat. 553; P.L. 105–85, § 2803, Nov. 18, 1997, 111 Stat. 1990; P.L. 105–261, § 2802, Oct. 17, 1998, 112 Stat. 2202; P.L. 106–398, § 1[2804], Oct. 30, 2000, 114 Stat. 1654, 1654A–414.)

§ 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 P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 162.)

§ 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 Transportation 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 P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 162; amended P.L. 99–348, § 304(a)(4), July 1, 1986, 100 Stat. 703; P.L. 100–180, § 632(a), Dec. 4, 1987, 101 Stat. 1105; P.L. 105–85, § 603(d)(2)(B), Nov. 18, 1997, 111 Stat. 1782.)

§ 2831. Military family housing management account

(a) 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) 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) 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 204(b) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485(b)).

(c) Amounts in the account shall remain available until spent.

(d) 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).

(Added P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 162.)

§ 2832. Homeowners assistance program

(a) 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).

(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.

(Added P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 163; amended P.L. 101–189, § 2831(a), Nov. 29, 1989, 103 Stat. 1660; P.L. 104–106, § 1502(a)(26), Feb. 10, 1996, 110 Stat. 506.)

§ 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 of the National Housing Act (12 U.S.C. 1715m).

(Added P.L. 99–167, § 804(b)(1), Dec. 3, 1985, 99 Stat. 987.)

§ 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.

(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 P.L. 99–167, § 808(a), Dec. 3, 1985, 99 Stat. 989; amended P.L. 101–510, § 1301(18), Nov. 5, 1990, 104 Stat. 1668; P.L. 103–160, § 2806, Nov. 30, 1993, 107 Stat. 1887.)

§ 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 Transportation with respect to the Coast Guard, 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 sec-

tion 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 Transportation 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 Transportation 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 Transportation, 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 Transportation 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 Transportation 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 contract is cost-effective when compared with alternative means of furnishing the same housing facilities; and

(2) a period of 21 calendar days has expired following the date on which the economic analysis is received by those committees.

(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 P.L. 102–190, § 2806(a), Dec. 5, 1991, 105 Stat. 1539.)

§ 2836. Military housing rental guarantee program

(a) AUTHORITY.—Subject to subsection (b), the Secretary of a military department, or the Secretary of Transportation with respect to the Coast Guard, 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.—(1) The Secretary of a military department, or the Secretary of Transportation 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.

(2) The budget material submitted to Congress by the Secretary of Defense, and the Secretary of Transportation 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.

(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, to Department of Transportation 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 Transportation with respect to the Coast Guard, 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 Transportation, 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) NOTICE AND WAIT REQUIREMENTS.—An agreement may not be entered into under subsection (a) until—

(1) the Secretary of Defense, or the Secretary of Transportation 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 calendar days has expired following the date on which the economic analysis is received by those committees.

(g) 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 the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

(Added P.L. 102–190, § 2809(a)(1), Dec. 5, 1991, 105 Stat. 1541.)

§ 2837. Limited partnerships with private developers of housing

(a) LIMITED PARTNERSHIPS.—(1) In order to meet the housing requirements of members of the armed forces, and the dependents of such members, at a military installation described in paragraph (2), the Secretary of a military department may enter into a limited partnership with one or more private developers to encourage the construction of housing and accessory structures within commuting distance of the installation. The Secretary may contribute not less than five percent, but not more than 35 percent, of the development costs under a limited partnership.

(2) Paragraph (1) applies to a military installation under the jurisdiction of the Secretary concerned at which there is a shortage of suitable housing to meet the requirements of members and dependents referred to in such paragraph.

(b) COLLATERAL INCENTIVE AGREEMENTS.—The Secretary concerned may also enter into collateral incentive agreements with private developers who enter into a limited partnership under subsection (a) to ensure that, where appropriate—

(1) a suitable preference will be afforded members of the armed forces in the lease or purchase, as the case may be, of

a reasonable number of the housing units covered by the limited partnership; or

(2) the rental rates or sale prices, as the case may be, for some or all of such units will be affordable for such members.

(c) SELECTION OF INVESTMENT OPPORTUNITIES.—(1) The Secretary concerned shall use publicly advertised, competitively bid or competitively negotiated, contracting procedures, as provided in chapter 137 of this title, to enter into limited partnerships under subsection (a).

(2) When a decision is made to enter into a limited partnership under subsection (a), the Secretary concerned shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include the justification for the limited partnership, the terms and conditions of the limited partnership, a description of the development costs for projects under the limited partnership, and a description of the share of such costs to be incurred by the Secretary concerned. The Secretary concerned may then enter into the limited partnership only after the end of the 21-day period beginning on the date the report is received by such committees.

(d) ACCOUNT.—(1) There is hereby established on the books of the Treasury an account to be known as the "Defense Housing Investment Account".

(2) There shall be deposited into the Account—

(A) such funds as may be authorized for and appropriated to the Account; and

(B) any proceeds received by the Secretary concerned from the repayment of investments or profits on investments of the Secretary under subsection (a).

(3) From such amounts as are provided in advance in appropriation Acts, funds in the Account shall be available to the Secretaries concerned in amounts determined by the Secretary of Defense for contracts, investments, and expenses necessary for the implementation of this section.

(4) The Secretary concerned may not enter into a contract in connection with a limited partnership under subsection (a) or a collateral incentive agreement under subsection (b) unless a sufficient amount of the unobligated balance of the funds in the Account is available to the Secretary, as of the time the contract is entered into, to satisfy the total obligations to be incurred by the United States under the contract.

[(e) Repealed. P.L. 104–106, § 2802(d)(1), Feb. 10, 1996, 110 Stat. 552.]

(f) REPORT.—Not later than 60 days after the end of each fiscal year in which activities are carried out under this section, the Secretaries concerned shall jointly transmit to Congress a report specifying the amount and nature of the deposits into, and the expenditures from, the Account during such fiscal year and of the amount and nature of all other expenditures made pursuant to such section during such fiscal year.

(g) TRANSFER OF LANDS PROHIBITED.—Nothing in this section shall be construed to permit the Secretary concerned, as part of a limited partnership entered into under this section, to transfer the

right, title, or interest of the United States in any real property under the jurisdiction of the Secretary concerned.

(h) EXPIRATION AND TERMINATION OF AUTHORITY.—The authority of the Secretary concerned to enter into a limited partnership under this section shall expire on September 30, 2000.

(Added P.L. 103–337, § 2803(a), Oct. 5, 1994, 108 Stat. 3051; amended P.L. 104–106, § 2802, Feb. 10, 1996, 110 Stat. 551; P.L. 106–65, § 1066(a)(28), Oct. 5, 1999, 113 Stat. 772.)

SUBCHAPTER III—ADMINISTRATION OF MILITARY CONSTRUCTION AND MILITARY FAMILY HOUSING

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§ 2851. Supervision of military construction projects

(a) 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) 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.

(Added P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 163.)

§ 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 355 of the Revised Statutes (40 U.S.C. 255); 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.

(Added P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 164; amended P.L. 97–295, § 1(35), Oct. 12, 1982, 96 Stat. 1296; P.L. 97–321, § 805(a)(1), Oct. 15, 1982, 96 Stat. 1573; P.L. 99–145, § 1303(a)(19), Nov. 8, 1985, 99 Stat. 739.)

§ 2853. Authorized cost 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 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)(1), whichever is less, if the Secretary concerned determines that such an increase in 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 approved originally by Congress.

(b) 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 approved for that project, construction, improvement, or acquisition by Congress.

(c) The limitation on cost increase in subsection (a) or the limitation on scope reduction in subsection (b) does not apply if—

(1) the increase 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 increase or reduction and the reasons therefor; and

(3) a period of 21 days has elapsed after the date on which the notification is received by the committees.

(d) The limitation on cost increases in subsection (a) does not apply to the settlement of a contractor claim under a contract.

(Added P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 164; amended P.L. 98–407, § 807, Aug. 28, 1984 98 Stat. 1521; P.L. 100–26, § 7(f)(2), April 21, 1987, 101 Stat. 281; P.L. 100–180, §§ 2312, 2313, Dec. 4, 1987, 101 Stat. 1217, 1218; revised in its entirety P.L. 101–189, § 2808, Nov. 29, 1989, 103 Stat. 1648; P.L. 104–106, § 2817, Feb. 10, 1996, 110 Stat. 553.)

§ 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.

(Added P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 165; amended P.L. 102–190, § 2870(7), Dec. 5, 1991, 105 Stat. 1563.)

§ 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 calendar days has elapsed after the date on which the justification is received by the committees.

(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) The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.).

(2) Title V of the Stewart B. McKinney 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 additional 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 P.L. 104–106, § 2818(a)(1), Feb. 10, 1996, 110 Stat. 553.)

§ 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 title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.).

(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 con-

tract 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 $85,000. 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 P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 166; amended P.L. 98–407, § 808, Aug. 28, 1984, 98 Stat. 1521.)

§ 2856. Limitations on barracks space by pay grade

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.

(Added P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 166; amended P.L. 101–510, § 1301(19), Nov. 5, 1990, 104 Stat. 1668.)

§ 2857. Use of renewable forms of energy in new facilities

(a) 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) where use of such form of energy would be practical and economically feasible.

(b)(1) The Secretary concerned shall require that the design of all new facilities (including family housing) shall include consideration of energy systems using solar energy or other renewable forms of energy in those cases in which use of such forms of energy has the potential for reduced energy costs.

(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)(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) 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.

(Added P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 166; amended P.L. 97–321, § 801(b) (1), (2), Oct. 15, 1982, 96 Stat. 1571; P.L. 98–525, § 1405(45), Oct. 19, 1984, 98 Stat. 2625; P.L. 101–218, § 8(b), Dec. 11, 1989, 103 Stat. 1868; P.L. 101–510, § 2852(b), Nov. 5, 1990, 104 Stat. 1804; P.L. 102–25, § 701(g)(2), April 6, 1991, 105 Stat. 115.)

§ 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 P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 167.)

§ 2859. Transmission of annual military construction authorization request

The Secretary of Defense shall transmit to Congress the annual request for military construction authorization for a fiscal year during the first 10 days after the President transmits to Congress the Budget for that fiscal year pursuant to section 1105 of title 31.

(Added P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 167; amended P.L. 97–295, § 1(36), Oct. 12, 1982, 96 Stat. 1296.)

§ 2860. Availability of appropriations [6]

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

[6] Sections 117 and 118 of the Military Construction Appropriations Act, 2001 (div. A of P.L. 106–246; 114 Stat. 516), provide:

SEC. 117. Notwithstanding any other provision of law, 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.

(TRANSFER OF FUNDS)

SEC. 118. 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 will 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 may 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.

[Identical provisions appeared in previous appropriations Acts for military construction.]

beyond such fiscal year to the extent provided in appropriation Acts.

(Added P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 167; amended P.L. 99–167, § 812(a), Dec. 3, 1985, 99 Stat. 991; P.L. 99–173, § 121(b), Dec. 10, 1985, 99 Stat. 1029; P.L. 99–661, § 1343(a)(21)(A), Nov. 14, 1986, 100 Stat. 3994.)

§ 2861. Annual report to Congress

(a) The Secretary of Defense shall submit a report to the appropriate committees of Congress each year with respect to military construction activities and military family housing activities. Each such report shall be submitted at the same time that the annual request for military construction authorization is submitted for that year. Except where otherwise provided in this section, information required by this section to be provided in the report shall be provided for the two most recent fiscal years and for the fiscal year for which the budget request is made.

(b) Each report under subsection (a) shall include the following:

(1) A statement of the construction status and a fiscal summary of the military construction projects undertaken under, and the amounts authorized and appropriated for, contingency construction under section 2804 of this title.

(2) Information to enable the committees to evaluate the relationships between budget requests for appropriations for unspecified minor construction projects under section 2805 of this title and obligations of appropriated funds for projects under such section. Such information shall include comparisons of budget requests and obligations using military construction appropriations and using operations and maintenance appropriations, maintenance and repair backlog, and obligations for maintenance and repair.

(3) Information to enable the committees to monitor trends in construction started using funds contributed by the United States under section 2806 of this title to the North Atlantic Treaty Organization Security Investment program and the status of recoupments under that program.

(4) Information to enable the committees to evaluate trends in contracting for architect and engineering services and construction design, and trends in accomplishing design of construction projects by Government employees, under the authority of section 2807 of this title.

(5) Information to enable the committees to evaluate trends in supervision, inspection, and overhead costs for the dollar amount of military construction accomplished during a fiscal year by a military construction department or agency under the authority of section 2851 of this title.

(6) A summary of military construction projects (other than a military construction project for an amount less than the amount specified by section 2805(a)(1) of this title as the maximum amount for a minor military construction project) placed under contract during the preceding fiscal year with respect to which a cost variation or scope reduction report was supplied to the appropriate committees of Congress under section 2853 of this title. There shall also be included an analysis to indicate whether the cost variation was the result of a lack

of competition, quality of plans and specifications, or quality of budget estimates, or of other factors.

(7) Information to enable the committees to evaluate the use of the authority provided under section 2858 of this title to expedite a military construction project when such expediting is required to protect the national interest.

(8) Information in sufficient detail to enable the committees to monitor trends in design, construction, performance goals, and progress.

(9) With respect to each contract awarded during the preceding fiscal year on other than a competitive basis to the lowest responsible bidder, the name of the contractor, the original amount of the contract, and the reason for the award of the contract on other than a competitive basis.

(Added P.L. 97–214, § 2(a), July 12, 1982, 96 Stat. 167; amended P.L. 100–26, § 7(f)(1), (j)(9), April 21, 1987, 101 Stat. 281, 283; P.L. 104–106, § 2811(b), Feb. 10, 1996, 110 Stat. 552; P.L. 104–201, § 2802(d)(1), Sept. 23, 1996, 110 Stat. 2787.)

§ 2862. Turn-key selection procedures

(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.

(Added P.L. 99–167, § 807(a), Dec. 3, 1985, 99 Stat. 988; amended P.L. 100–26, § 7(k)(3), April 21, 1987, 101 Stat. 284; P.L. 100–180, § 2301, Dec. 4, 1987, 101 Stat. 1214; P.L. 101–189, § 2806, Nov. 29, 1989, 103 Stat. 1647; P.L. 102–190, § 2802, Dec. 5, 1991, 105 Stat. 1537.)

§ 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 P.L. 100–180, § 2303(a), Dec. 4, 1987, 101 Stat. 1215.)

§ 2864. Military construction contracts on Guam

(a) IN GENERAL.—Except as provided in subsection (b), funds appropriated for military construction may not be obligated or expended with respect to any contract for a military construction project on Guam if any work is carried out on such project by any person who is a nonimmigrant alien described in section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)).

(b) EXCEPTION.—In any case in which there is no acceptable bid made in response to a solicitation for bids on a contract for a military construction project on Guam and the Secretary concerned

makes a determination that the prohibition contained in subsection (a) is a significant deterrent to obtaining bids on such contract, the Secretary concerned may make another solicitation for bids on such contract and the prohibition contained in subsection (a) shall not apply to such contract.

(Added P.L. 101–189, § 2807(a), Nov. 29, 1989, 103 Stat. 1648; amended P.L. 104–106, § 1062(g), Feb. 10, 1996, 110 Stat. 444.)

§ 2865. Energy savings at military installations

(a) ENERGY PERFORMANCE GOAL AND PLAN.—(1) The Secretary of Defense shall designate an energy performance goal for the Department of Defense for the years 1991 through 2000.

(2) To achieve the goal designated under paragraph (1), the Secretary shall develop a comprehensive plan to identify and accomplish energy conservation measures to achieve maximum cost-effective energy savings.

(3) For the purpose of implementing any energy performance plan, the Secretary shall provide that the selection of energy conservation measures, including energy efficient maintenance or water efficient maintenance, under such plan shall be limited to those with a positive net present value over a period of 10 years or less.

(4) In paragraph (3), the term "energy efficient maintenance or water efficient maintenance" includes—

(A) the repair by replacement of equipment or systems, such as lighting, heating, or cooling equipment or systems, industrial processes, or water efficiency applications, with technology that—

(i) will achieve the most cost-effective 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 reduced costs through energy savings or water cost savings.

(b) USE OF ENERGY COST SAVINGS.—(1) Two-thirds of the portion 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, shall remain available for obligation under paragraph (2) through the end of the fiscal year following the fiscal year for which the funds were appropriated, without additional authorization or appropriation.

(2) The Secretary shall provide that the amount that remains available for obligation under paragraph (1) and section 2866(a)(3) of this title, and the funds made available under section 2867(b)(2) of this title, shall be used as follows:

(A) One-half of the amount shall be used for the implementation of additional energy conservation measures and 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 savings referred to in paragraph (1) or in section 2866(a)(3) of this title.

(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) Financial incentives received from gas or electric utilities under subsection (d)(2), and from utilities for management of water demand or water conservation under section 2866(a)(2) 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.

(c) 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 as well as the private sector.

(2)(A) In carrying out paragraph (1), the Secretary of Defense may—

(i) 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;

(ii) designate from the statements received, with an update at least annually, those firms that are presumptively qualified to provide shared energy savings services;

(iii) 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

(iv) 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.

(B) 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.

(d) ENERGY SAVING 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 any gas or electric utility for

the management of electricity demand or for energy conservation or by any utility for water conservation activities.

(2) 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 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 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.

(4)(A) If an agreement under paragraph (3) provides for a utility to advance financing costs for the design or implementation of a program referred to in that paragraph to be repayed 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.

(B) Subject to the availability of appropriations, repayment of costs advanced 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 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.

(e) ENERGY CONSERVATION CONSTRUCTION PROJECTS.—(1) 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.

(2) When a decision is made to carry out a project under paragraph (1), 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.

(f) ANNUAL REPORT.—Not later than December 31 of each year, the Secretary of Defense shall transmit an annual report to the Congress containing a description of the actions taken to carry out this section, and the savings realized from such actions, during the fiscal year ending in the year in which the report is made. The Secretary shall also include in each report the types and amount of financial incentives received under subsection (d)(2) and section 2866(a)(2) of this title during the period covered by the report and the appropriation account or accounts to which the incentives were credited.

(Added P.L. 101–510, § 2851(a), Nov. 5, 1990, 104 Stat. 1803; amended P.L. 102–484, § 2801, Oct. 23, 1992, 106 Stat. 2604; P.L. 103–160, § 2804, Nov. 30, 1993, 107 Stat. 1885; P.L. 103–337, § 1070(a)(14), Oct. 5, 1994, 108 Stat. 2856; P.L. 104–106, §§ 1502(a)(27), 2819, Feb. 10, 1996, 110 Stat. 506, 555; P.L. 105–85, §§ 371(d)(2), 2804(a), Nov. 18, 1997, 111 Stat. 1706, 1990.)

§ 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 repayed 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 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.

(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.

(Added P.L. 103–160, § 2803(a), Nov. 30, 1993, 107 Stat. 1884; amended P.L. 104–106, § 1502(a)(27), Feb. 10, 1996, 110 Stat. 506; P.L. 105–85, § 2804(b), Nov. 18, 1997, 111 Stat. 1991.)

§ 2867. 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 2865(a) 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.

(Added as § 2483 P.L. 98–407, § 810, Aug. 28, 1984, 98 Stat. 1523; amended P.L. 103–160, § 2802, Nov. 30, 1993, 107 Stat. 1884; transferred and redesignated § 2867 P.L. 105–85, § 371(b)(2), Nov. 18, 1997, 111 Stat. 1705.)

§ 2868. Utility services: furnishing for certain buildings

Appropriations for the Department of Defense may be used for utility services 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.

(Added as § 2490 P.L. 100–370, § 1(j)(1), July 19, 1988, 102 Stat. 848; transferred and redesignated § 2868 P.L. 105–85, § 371(b)(2), Nov. 18, 1997, 111 Stat. 1705.)

SUBCHAPTER IV—ALTERNATIVE AUTHORITY FOR ACQUISITION AND IMPROVEMENT OF MILITARY HOUSING

Sec.
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§ 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, tot lots, community centers, housing offices, dining facilities, unit offices, and other similar facilities for the support of military housing.

(2) 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).

(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.

(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.

(8) The term "United States" includes the Commonwealth of Puerto Rico.

(Added P.L. 104–106, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 544; amended P.L. 105–261, § 2803, Oct. 17, 1998, 112 Stat. 2202; P.L. 106–65, § 2803(a), Oct. 5, 1999, 113 Stat. 848; P.L. 106–65, § 2803(a), Oct. 5, 1999, 113 Stat. 848.)

§ 2872. General authority [7]

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 P.L. 104–106, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 545; amended P.L. 106–65, § 2803(b), Oct. 5, 1999, 113 Stat. 849.)

§ 2872a. Utilities and services

(a) AUTHORITY TO FURNISH.—The Secretary concerned may furnish utilities and services referred 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.

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[7] Section 125 of the Military Construction Appropriations Act, 2001 (div. A of P.L. 106–246; 114 Stat. 517), provides:

SEC. 125. (a) Not later than 60 days before issuing any solicitation for a contract with the private sector for military family housing the Secretary of the military department concerned shall submit to the congressional defense committees the notice described in subsection (b).

(b)(1) A notice referred to in subsection (a) is a notice of any guarantee (including the making of mortgage or rental payments) proposed to be made by the Secretary to the private party under the contract involved in the event of—

(A) the closure or realignment of the installation for which housing is provided under the contract;

(B) a reduction in force of units stationed at such installation; or

(C) the extended deployment overseas of units stationed at such installation.

(2) Each notice under this subsection shall specify the nature of the guarantee involved and assess the extent and likelihood, if any, of the liability of the Federal Government with respect to the guarantee.

(c) In this section, the term "congressional defense committees" means the following:

(1) The Committee on Armed Services and the Military Construction Subcommittee, Committee on Appropriations of the Senate.

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

(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) shall be credited to the appropriation or working capital account from which the cost of furnishing the utilities or services concerned was paid. Amounts so credited 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 P.L. 106–398, § 1[2805(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–414.)

§ 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 sec-

tion and for all other cash flows to and from the Government as a result of direct loans and guarantees made under this section.

(Added P.L. 104–106, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 545; amended P.L. 106–65, § 2803(c), Oct. 5, 1999, 113 Stat. 848.)

§ 2874. Leasing of housing to be constructed

(a) BUILD AND LEASE AUTHORIZED.—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.

(b) 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 P.L. 104–106, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 546.)

§ 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.

(e) CONGRESSIONAL NOTIFICATION REQUIRED.—Amounts in the Department of Defense Family Housing Improvement Fund or the Department of Defense Military Unaccompanied Housing Improve-

ment 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.

(Added P.L. 104–106, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 546; amended P.L. 105–85, § 2805, Nov. 18, 1997, 111 Stat. 1991; P.L. 106–65, § 2803(d), (h), Oct. 5, 1999, 113 Stat. 849.)

§ 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 P.L. 104–106, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 546; amended P.L. 106–65, § 2803(e), Oct. 5, 1999, 113 Stat. 849.)

§ 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 appropriate 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 P.L. 104–106, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 547; amended P.L. 106–65, § 2803(f), Oct. 5, 1999, 113 Stat. 849.)

§ 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) 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.

(d) 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) The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.).

(3) Section 321 of the Act of June 30, 1932 (commonly known as the Economy Act) (40 U.S.C. 303b).

(4) Section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411).

(Added P.L. 104–106, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 547; amended P.L. 105–85, § 1073(a)(60), Nov. 18, 1997, 111 Stat. 1903; P.L. 106–65, § 2803(g), Oct. 5, 1999, 113 Stat. 849.)

§ 2879. Interim leases

Pending completion of a project to acquire or construct military family housing units or military unaccompanied housing units under this subchapter, the Secretary concerned may provide for the interim lease of such units of the project as are complete. The term of a lease under this section may not extend beyond the date of the completion of the project concerned.

(Added P.L. 104–106, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 547.)

§ 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.—(1) Section 2826 of this title shall not apply to military family housing units acquired or constructed under this subchapter.

(2) The regulations prescribed under section 2856 of this title shall not apply to any military unaccompanied housing unit acquired or constructed under this subchapter unless the unit is located on a military installation.

(Added P.L. 104–106, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 548.)

§ 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 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 P.L. 104–106, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 548; P.L. 106–65, § 2804, Oct. 5, 1999, 113 Stat. 849.)

§ 2882. Assignment of members of the armed forces to housing units

(a) IN GENERAL.—The Secretary concerned may assign members of the armed forces to housing units acquired or constructed under this subchapter.

(b) EFFECT OF CERTAIN ASSIGNMENTS ON ENTITLEMENT TO HOUSING ALLOWANCES.—(1) Except as provided in paragraph (2), housing referred to in subsection (a) 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.

(2) A member of the armed forces who is assigned in accordance with subsection (a) to a housing unit 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 P.L. 104–106, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 548; amended P.L. 105–85, § 603(d)(2)(C), Nov. 18, 1997, 111 Stat. 1783.)

§ 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 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.

(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.

(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.—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.

(f) NOTIFICATION REQUIRED FOR TRANSFERS.—A transfer of appropriated amounts to a Fund under paragraph (1)(B) or (2)(B) 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.

(g) LIMITATION ON AMOUNT OF BUDGET AUTHORITY.—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.

(Added P.L. 104–106, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 548; amended P.L. 104–201, § 2804, Sept. 23, 1996, 110 Stat. 2788; P.L. 106–65, § 2802(b), Oct. 5, 1999, 113 Stat. 848.)

§ 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) 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.

(b) ANNUAL REPORTS.—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 report on the expenditures and receipts during the preceding fiscal year covering the Funds established under section 2883 of this title.

(2) A methodology for evaluating the extent and effectiveness of the use of the authorities under this subchapter during such preceding fiscal year.

(3) 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.

(Added P.L. 104–106, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 550.)

§ 2885. Expiration of authority

The authority to enter into a contract under this subchapter shall expire on December 31, 2004.

(Added P.L. 104–106, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 551; amended P.L. 105–85, § 1073(a)(61), Nov. 18, 1997, 111 Stat. 1903; P.L. 106–398, § 1[2806], Oct. 30, 2000, 114 Stat. 1654, 1654A–415.)

[CHAPTER 171—REPEALED]

[§§ 2891 & 2892. Repealed. P.L. 104–106, § 1061(b)(1), Feb. 10, 1996, 110 Stat. 442]

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 P.L. 101–510, § 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 Deputy Under Secretary of Defense for Science and Technology.

(2) The Vice Chairman of the Joint Chiefs of Staff.

(3) The Deputy Under Secretary of Defense 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, includ-

ing 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 Envi-

ronmental 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)(1) 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).

(2) 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.

(Added P.L. 101–510, § 1801(a)(1), Nov. 5, 1990, 104 Stat. 1751; amended P.L. 102–190, § 257(a), § 1061(a)(19), Dec. 5, 1991, 105 Stat. 1331, 1473; P.L. 102–484, § 1052(38), Oct. 23, 1992, 106 Stat. 2501; P.L. 103–160, § 265(a), Nov. 30, 1993, 107 Stat. 1611; P.L. 104–106, § 203(a)-(b)(2), (c), Feb. 10, 1996, 110 Stat. 217; P.L. 105–245, § 309(b)(2)(B), Oct. 8, 1998, 112 Stat. 1853; P.L. 106–65, § 324, Oct. 5, 1999, 113 Stat. 563; P.L. 106–398, § 1[313(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–55.)

§ 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 P.L. 101–510, § 1801(a)(1), Nov. 5, 1990, 104 Stat. 1755; amended P.L. 102–25, § 701(h)(2), April 6, 1991, 105 Stat. 115; P.L. 103–160, § 265(b), Nov. 30, 1993, 107 Stat. 1611; P.L. 104–106, § 203(d)-(e)(1), Feb. 10, 1996, 110 Stat. 218.)

§ 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 P.L. 101–510, § 1801(a)(1), Nov. 5, 1990, 104 Stat. 1756; amended P.L. 102–190, § 257(b), Dec. 5, 1991, 105 Stat. 1331; P.L. 105–85, § 341, Nov. 18, 1997, 111 Stat. 1686; P.L. 106–398, § 1[313(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–55.)

Subtitle B—Army

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CHAPTER 301—DEFINITIONS

Sec.
3001. Definitions.

§ 3001. Definitions

In this title, the term "Army" means the Army or Armies referred to in the Constitution of the United States, less that part established by law as the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 157; April 21, 1987, P.L. 100–26, § 7(k)(8), 101 Stat. 284.)

CHAPTER 303—DEPARTMENT OF THE ARMY

Sec.
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§ 3011. Organization

The Department of the Army is separately organized under the Secretary of the Army. It operates under the authority, direction, and control of the Secretary of Defense.

(Added § 3010, P.L. 87–651, § 210(a), Sept. 7, 1962, 76 Stat. 524; redesignated § 3011, P.L. 99–433, § 501(a)(2), Oct. 1, 1986, 100 Stat. 1034 [former § 3011 redesignated § 3012].)

§ 3012. Department of the Army: seal

The Secretary of the Army shall have a seal for the Department of the Army. The design of the seal must be approved by the President. Judicial notice shall be taken of the seal.

(Aug. 10, 1956, § 3011, ch. 1041, 70A Stat. 157; redesignated § 3012, P.L. 99–433, § 501(a)(2), Oct. 1, 1986, 100 Stat. 1034 [former § 3012 redesignated § 3013].)

§ 3013. Secretary of the Army

(a)(1) There is a Secretary of the Army, appointed from civilian life by the President, by and with the advice and consent of the Senate. The Secretary is the head of the Department of the Army.

(2) A person may not be appointed as Secretary of the Army within five years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) Subject to the authority, direction, and control of the Secretary of Defense and subject to the provisions of chapter 6 of this title, the Secretary of the Army is responsible for, and has the authority necessary to conduct, all affairs of the Department of the Army, including the following functions:

(1) Recruiting.
(2) Organizing.
(3) Supplying.
(4) Equipping (including research and development).
(5) Training.
(6) Servicing.
(7) Mobilizing.
(8) Demobilizing.

(9) Administering (including the morale and welfare of personnel).

(10) Maintaining.

(11) The construction, outfitting, and repair of military equipment.

(12) The construction, maintenance, and repair of buildings, structures, and utilities and the acquisition of real property and interests in real property necessary to carry out the responsibilities specified in this section.

(c) Subject to the authority, direction, and control of the Secretary of Defense, the Secretary of the Army is also responsible to the Secretary of Defense for—

(1) the functioning and efficiency of the Department of the Army;

(2) the formulation of policies and programs by the Department of the Army that are fully consistent with national security objectives and policies established by the President or the Secretary of Defense;

(3) the effective and timely implementation of policy, program, and budget decisions and instructions of the President or the Secretary of Defense relating to the functions of the Department of the Army;

(4) carrying out the functions of the Department of the Army so as to fulfill (to the maximum extent practicable) the current and future operational requirements of the unified and specified combatant commands;

(5) effective cooperation and coordination between the Department of the Army and the other military departments and agencies of the Department of Defense to provide for more effective, efficient, and economical administration and to eliminate duplication;

(6) the presentation and justification of the positions of the Department of the Army on the plans, programs, and policies of the Department of Defense; and

(7) the effective supervision and control of the intelligence activities of the Department of the Army.

(d) The Secretary of the Army is also responsible for such other activities as may be prescribed by law or by the President or Secretary of Defense.

(e) After first informing the Secretary of Defense, the Secretary of the Army may make such recommendations to Congress relating to the Department of Defense as he considers appropriate.

(f) The Secretary of the Army may assign such of his functions, powers, and duties as he considers appropriate to the Under Secretary of the Army and to the Assistant Secretaries of the Army. Officers of the Army shall, as directed by the Secretary, report on any matter to the Secretary, the Under Secretary, or any Assistant Secretary.

(g) The Secretary of the Army may—

(1) assign, detail, and prescribe the duties of members of the Army and civilian personnel of the Department of the Army;

(2) change the title of any officer or activity of the Department of the Army not prescribed by law; and

(3) prescribe regulations to carry out his functions, powers, and duties under this title.

(Aug. 10, 1956, § 3012, ch. 1041, 70A Stat. 157, [amended several times], redesignated § 3013 and revised in its entirety P.L. 99–433, § 501 (a)(2), (5), Oct. 1, 1986, 100 Stat. 1034 (former § 3013 now covered by §§ 3015, 3016); amended P.L. 99–661, § 534, Nov. 14, 1986, 100 Stat. 3873.)

§ 3014. Office of the Secretary of the Army

(a) There is in the Department of the Army an Office of the Secretary of the Army. The function of the Office is to assist the Secretary of the Army in carrying out his responsibilities.

(b) The Office of the Secretary of the Army is composed of the following:

(1) The Under Secretary of the Army.

(2) The Assistant Secretaries of the Army.

(3) The Administrative Assistant to the Secretary of the Army.

(4) The General Counsel of the Department of the Army.

(5) The Inspector General of the Army.

(6) The Army Reserve Forces Policy Committee.

(7) Such other offices and officials as may be established by law or as the Secretary of the Army may establish or designate.

(c)(1) The Office of the Secretary of the Army shall have sole responsibility within the Office of the Secretary and the Army Staff for the following functions:

(A) Acquisition.

(B) Auditing.

(C) Comptroller (including financial management).

(D) Information management.

(E) Inspector General.

(F) Legislative affairs.

(G) Public affairs.

(2) The Secretary of the Army shall establish or designate a single office or other entity within the Office of the Secretary of the Army to conduct each function specified in paragraph (1). No office or other entity may be established or designated within the Army Staff to conduct any of the functions specified in paragraph (1).

(3) The Secretary shall prescribe the relationship of each office or other entity established or designated under paragraph (2) to the Chief of Staff and to the Army Staff and shall ensure that each such office or entity provides the Chief of Staff such staff support as the Chief of Staff considers necessary to perform his duties and responsibilities.

(4) The vesting in the Office of the Secretary of the Army of the responsibility for the conduct of a function specified in paragraph (1) does not preclude other elements of the executive part of the Department of the Army (including the Army Staff) from providing advice or assistance to the Chief of Staff or otherwise participating in that function within the executive part of the Department under the direction of the office assigned responsibility for that function in the Office of the Secretary of the Army.

(5) The head of the office or other entity established or designated by the Secretary to conduct the auditing function shall have at least five years of professional experience in accounting or

auditing. The position shall be considered to be a career reserved position as defined in section 3132(a)(8) of title 5.

(d)(1) Subject to paragraph (2), the Office of the Secretary of the Army shall have sole responsibility within the Office of the Secretary and the Army Staff for the function of research and development.

(2) The Secretary of the Army may assign to the Army Staff responsibility for those aspects of the function of research and development that relate to military requirements and test and evaluation.

(3) The Secretary shall establish or designate a single office or other entity within the Office of the Secretary of the Army to conduct the function specified in paragraph (1).

(4) The Secretary shall prescribe the relationship of the office or other entity established or designated under paragraph (3) to the Chief of Staff of the Army and to the Army Staff and shall ensure that each such office or entity provides the Chief of Staff such staff support as the Chief of Staff considers necessary to perform his duties and responsibilities.

(e) The Secretary of the Army shall ensure that the Office of the Secretary of the Army and the Army Staff do not duplicate specific functions for which the Secretary has assigned responsibility to the other.

(f)(1) The total number of members of the armed forces and civilian employees of the Department of the Army assigned or detailed to permanent duty in the Office of the Secretary of the Army and on the Army Staff may not exceed 3,105.

(2) Not more than 1,865 officers of the Army on the active-duty list may be assigned or detailed to permanent duty in the Office of the Secretary of the Army and on the Army Staff.

(3) The total number of general officers assigned or detailed to permanent duty in the Office of the Secretary of the Army and on the Army Staff may not exceed the number equal to 85 percent of the number of general officers assigned or detailed to such duty on the date of the enactment of this subsection.

(4) The limitations in paragraphs (1), (2), and (3) do not apply in time of war or during a national emergency declared by the President or Congress. The limitation in paragraph (2) does not apply whenever the President determines that it is in the national interest to increase the number of officers assigned or detailed to permanent duty in the Office of the Secretary of the Army or on the Army Staff.

(Added P.L. 99–433, § 501(a) (2), (5), Oct. 1, 1986, 100 Stat. 1036; amended P.L. 100–180, § 1314(b)(7), Dec. 4, 1987, 101 Stat. 1175; P.L. 100–456, § 325(a), Sept. 29, 1988, 102 Stat. 1955; P.L. 101–189, § 652(a)(4), Nov. 29, 1989, 103 Stat. 1461.)

§ 3015. Under Secretary of the Army

(a) There is an Under Secretary of the Army, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The Under Secretary shall perform such duties and exercise such powers as the Secretary of the Army may prescribe.

(Added P.L. 99–433, § 501(a) (2), (5), Oct. 1, 1986, 100 Stat. 1036 [formerly covered by § 3013] (former § 3015 transferred and redesignated § 3040).)

§ 3016. Assistant Secretaries of the Army

(a) There are five Assistant Secretaries of the Army. They shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b)(1) The Assistant Secretaries shall perform such duties and exercise such powers as the Secretary of the Army may prescribe.

(2) One of the Assistant Secretaries shall be the Assistant Secretary of the Army for Manpower and Reserve Affairs. He shall have as his principal duty the overall supervision of manpower and reserve component affairs of the Department of the Army.

(3) One of the Assistant Secretaries shall be the Assistant Secretary of the Army for Civil Works. He shall have as his principal duty the overall supervision of the functions of the Department of the Army relating to programs for conservation and development of the national water resources, including flood control, navigation, shore protection, and related purposes.

(4) One of the Assistant Secretaries shall be the Assistant Secretary of the Army for Financial Management. The Assistant Secretary shall have as his principal responsibility the exercise of the comptroller functions of the Department of the Army, including financial management functions. The Assistant Secretary shall be responsible for all financial management activities and operations of the Department of the Army and shall advise the Secretary of the Army on financial management.

(Added P.L. 99–433, § 501(a)(5), Oct. 1, 1986, 100 Stat. 1035 [formerly covered by § 3013] (former § 3016 redesignated § 3018), and amended P.L. 100–456, § 702(a)(1), Sept. 29, 1988, 102 Stat. 1992.)

§ 3017. Secretary of the Army: successors to duties

If the Secretary of the Army dies, resigns, is removed from office, is absent, or is disabled, the person who is highest on the following list, and who is not absent or disabled, shall perform the duties of the Secretary until the President, under section 3347 of title 5, directs another person to perform those duties or until the absence or disability ceases:

(1) The Under Secretary of the Army.

(2) The Assistant Secretaries of the Army in the order prescribed by the Secretary of the Army and approved by the Secretary of Defense.

(3) The General Counsel of the Department of the Army.

(4) The Chief of Staff.

(Aug. 10, 1956, ch. 1041, 70A Stat. 159; Nov. 2, 1966, P.L. 89–718, § 23, 80 Stat. 1118; Jan. 2, 1968, P.L. 90–235, § 4(a)(7), 81 Stat. 759; Oct. 1, 1986, P.L. 99–433, § 501(a)(6), 100 Stat. 1034; Oct. 5, 1994, P.L. 103–337, § 902(a), 108 Stat. 2823.)

§ 3018. Administrative Assistant

(a) There is an Administrative Assistant in the Department of the Army. The Administrative Assistant shall be appointed by the Secretary of the Army and shall perform duties that the Secretary considers appropriate.

(b) During a vacancy in the office of Secretary, the Administrative Assistant has charge and custody of all records, books, and papers of the Department of the Army.

(c) The Secretary may authorize the Administrative Assistant to sign, during the temporary absence of the Secretary, any paper requiring his signature. In such a case, the Administrative Assistant's signature has the same effect as the Secretary's signature.

(Aug. 10, 1956, § 3016, ch. 1041, 70A Stat. 159; redesignated § 3018 P.L. 99–433, Oct. 1, 1986, § 501(a)(3), 100 Stat. 1034.)

§ 3019. General Counsel

(a) There is a General Counsel of the Department of the Army, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The General Counsel shall perform such functions as the Secretary of the Army may prescribe.

(Added P.L. 99–433, § 501(a)(7), Oct. 1, 1986, 100 Stat. 1038 [former § 3019 transferred and redesignated § 3038], and amended P.L. 100–456, § 703(a), Sept. 29, 1988, 102 Stat. 1996.)

§ 3020. Inspector General

(a) There is an Inspector General of the Army who shall be detailed to such position by the Secretary of the Army from the general officers of the Army. An officer may not be detailed to such position for a tour of duty of more than four years, except that the Secretary may extend such a tour of duty if he makes a special finding that the extension is necessary in the public interest.

(b) When directed by the Secretary or the Chief of Staff, the Inspector General shall—

(1) inquire into and report upon the discipline, efficiency, and economy of the Army; and

(2) perform any other duties prescribed by the Secretary or the Chief of Staff.

(c) The Inspector General shall periodically propose programs of inspections to the Secretary of the Army and shall recommend additional inspections and investigations as may appear appropriate.

(d) The Inspector General shall cooperate fully with the Inspector General of the Department of Defense in connection with the performance of any duty or function by the Inspector General of the Department of Defense under the Inspector General Act of 1978 (5 U.S.C. App. 3) regarding the Department of the Army.

(e) The Inspector General shall have such deputies and assistants as the Secretary of the Army may prescribe. Each such deputy and assistant shall be an officer detailed by the Secretary to that position from the officers of the Army for a tour of duty of not more than four years, under a procedure prescribed by the Secretary.

(Added P.L. 99–433, § 501(a)(7), Oct. 1, 1986, 100 Stat. 1038.)

§ 3021. Army Reserve Forces Policy Committee

There is in the Office of the Secretary of the Army an Army Reserve Forces Policy Committee. The functions, membership, and organization of that committee are set forth in section 10302 of this title.

(Added P.L. 103–337, § 1661(b)(4)(A), Oct. 5, 1994, 108 Stat. 2982.)

§ 3022. Financial management

(a) The Secretary of the Army shall provide that the Assistant Secretary of the Army for Financial Management shall direct and manage financial management activities and operations of the Department of the Army, including ensuring that financial management systems of the Department of the Army comply with subsection (b). The authority of the Assistant Secretary for such direction and management shall include the authority to—

(1) supervise and direct the preparation of budget estimates of the Department of the Army and otherwise carry out, with respect to the Department of the Army, the functions specified for the Under Secretary of Defense (Comptroller) in section 135(c) of this title;

(2) approve and supervise any project to design or enhance a financial management system for the Department of the Army; and

(3) approve the establishment and supervise the operation of any asset management system of the Department of the Army, including—

(A) systems for cash management, credit management, and debt collection; and

(B) systems for the accounting for the quantity, location, and cost of property and inventory.

(b)(1) Financial management systems of the Department of the Army (including accounting systems, internal control systems, and financial reporting systems) shall be established and maintained in conformance with—

(A) the accounting and financial reporting principles, standards, and requirements established by the Comptroller General under section 3511 of title 31; and

(B) the internal control standards established by the Comptroller General under section 3512 of title 31.

(2) Such systems shall provide for—

(A) complete, reliable, consistent, and timely information which is prepared on a uniform basis and which is responsive to the financial information needs of department management;

(B) the development and reporting of cost information;

(C) the integration of accounting and budgeting information; and

(D) the systematic measurement of performance.

(c) The Assistant Secretary shall maintain a five-year plan describing the activities the Department of the Army proposes to conduct over the next five fiscal years to improve financial management. Such plan shall be revised annually.

(d) The Assistant Secretary of the Army for Financial Management shall transmit to the Secretary of the Army a report each year on the activities of the Assistant Secretary during the preceding year. Each such report shall include a description and analysis of the status of Department of the Army financial management.

(Added P.L. 100–456, § 702(a)(2), Sept. 29, 1988, 102 Stat. 1993; amended P.L. 103–337, § 1070(a)(15), Oct. 5, 1994, 108 Stat. 2856; P.L. 104–106, § 1503(b)(1), Feb. 10, 1996, 110 Stat. 512.)

CHAPTER 305—THE ARMY STAFF

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3035. Deputy Chiefs of Staff and Assistant Chiefs of Staff.
3036. Chiefs of branches: appointment; duties.
3037. Judge Advocate General, Assistant Judge Advocate General, and general officers of Judge Advocate General's Corps: appointment; duties.
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3039. Deputy and assistant chiefs of branches.
[3040. Repealed.]

§ 3031. The Army Staff: function; composition

(a) There is in the executive part of the Department of the Army an Army Staff. The function of the Army Staff is to assist the Secretary of the Army in carrying out his responsibilities.

(b) The Army Staff is composed of the following:

(1) The Chief of Staff.

(2) The Vice Chief of Staff.

(3) The Deputy Chiefs of Staff.

(4) The Assistant Chiefs of Staff.

(5) The Chief of Engineers.

(6) The Surgeon General of the Army.

(7) The Judge Advocate General of the Army.

(8) The Chief of Chaplains of the Army.

(9) The Chief of Army Reserve.

(10) Other members of the Army assigned or detailed to the Army Staff.

(11) Civilian employees of the Department of the Army assigned or detailed to the Army Staff.

(c) Except as otherwise specifically prescribed by law, the Army Staff shall be organized in such manner, and its members shall perform such duties and have such titles, as the Secretary may prescribe.

(Aug. 10, 1956, ch. 1041, 70A Stat. 150; Dec. 26, 1974, P.L. 93–547, 88 Stat. 1742; Jan. 2, 1975, P.L. 93–608, § 1(6), 88 Stat. 1968; Oct. 19, 1984, P.L. 98–525, § 515, 98 Stat. 2522; revised in its entirety P.L. 99–433, § 502(a), Oct. 1, 1986, 100 Stat. 1039.)

§ 3032. The Army Staff: general duties

(a) The Army Staff shall furnish professional assistance to the Secretary, the Under Secretary, and the Assistant Secretaries of the Army and to the Chief of Staff of the Army.

(b) Under the authority, direction, and control of the Secretary of the Army, the Army Staff shall—

(1) subject to subsections (c) and (d) of section 3014 of this title, prepare for such employment of the Army, and for such recruiting, organizing, supplying, equipping (including those aspects of research and development assigned by the Secretary

of the Army), training, servicing, mobilizing, demobilizing, administering, and maintaining of the Army, as will assist in the execution of any power, duty, or function of the Secretary or the Chief of Staff;

(2) investigate and report upon the efficiency of the Army and its preparation to support military operations by combatant commands;

(3) prepare detailed instructions for the execution of approved plans and supervise the execution of those plans and instructions;

(4) as directed by the Secretary or the Chief of Staff, coordinate the action of organizations of the Army; and

(5) perform such other duties, not otherwise assigned by law, as may be prescribed by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 161; Aug. 6, 1958, P.L. 85–599, § 4(g), 72 Stat. 517; Oct. 1, 1986, P.L. 99–433, § 502(b), 100 Stat. 1040.)

§ 3033. Chief of Staff

(a)(1) There is a Chief of Staff of the Army, appointed for a period of four years by the President, by and with the advice and consent of the Senate, from the general officers of the Army. He serves at the pleasure of the President. In time of war or during a national emergency declared by Congress, he may be reappointed for a term of not more than four years.

(2) The President may appoint an officer as Chief of Staff only if—

(A) the officer has had significant experience in joint duty assignments; and

(B) such experience includes at least one full tour of duty in a joint duty assignment (as defined in section 664(f) of this title) as a general officer.

(3) The President may waive paragraph (2) in the case of an officer if the President determines such action is necessary in the national interest.

(b) The Chief of Staff, while so serving, has the grade of general without vacating his permanent grade.

(c) Except as otherwise prescribed by law and subject to section 3013(f) of this title, the Chief of Staff performs his duties under the authority, direction, and control of the Secretary of the Army and is directly responsible to the Secretary.

(d) Subject to the authority, direction, and control of the Secretary of the Army, the Chief of Staff shall—

(1) preside over the Army Staff;

(2) transmit the plans and recommendations of the Army Staff to the Secretary and advise the Secretary with regard to such plans and recommendations;

(3) after approval of the plans or recommendations of the Army Staff by the Secretary, act as the agent of the Secretary in carrying them into effect;

(4) exercise supervision, consistent with the authority assigned to commanders of unified or specified combatant commands under chapter 6 of this title, over such of the members and organizations of the Army as the Secretary determines;

(5) perform the duties prescribed for him by section 171 of this title and other provisions of law; and

(6) perform such other military duties, not otherwise assigned by law, as are assigned to him by the President, the Secretary of Defense, or the Secretary of the Army.

(e)(1) The Chief of Staff shall also perform the duties prescribed for him as a member of the Joint Chiefs of Staff under section 151 of this title.

(2) To the extent that such action does not impair the independence of the Chief of Staff in the performance of his duties as a member of the Joint Chiefs of Staff, the Chief of Staff shall inform the Secretary regarding military advice rendered by members of the Joint Chiefs of Staff on matters affecting the Department of the Army.

(3) Subject to the authority, direction, and control of the Secretary of Defense, the Chief of Staff shall keep the Secretary of the Army fully informed of significant military operations affecting the duties and responsibilities of the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 162, § 3034; Aug. 6, 1958, P.L. 85–599, § 4(a), 72 Stat. 516; Sept. 7, 1962, P.L. 87–651, § 114, 76 Stat. 513; June 5, 1967, P.L. 90–22, § 401, 81 Stat. 53; Dec. 12, 1980, P.L. 96–513, § 502(2), 94 Stat. 2909; July 10, 1981, P.L. 97–22, § 10(b)(4), 95 Stat. 137; redesignated § 3033 and revised in its entirety P.L. 99–433, 502(c), Oct. 1, 1986, 100 Stat. 1040 [former § 3033 transferred and redesignated § 3021]; amended P.L. 100–456, § 519(a)(3), Sept. 29, 1988, 102 Stat. 1972.)

§ 3034. Vice Chief of Staff

(a) There is a Vice Chief of Staff of the Army, appointed by the President, by and with the advice and consent of the Senate, from the general officers of the Army.

(b) The Vice Chief of Staff of the Army, while so serving, has the grade of general without vacating his permanent grade.

(c) The Vice Chief of Staff has such authority and duties with respect to the Department of the Army as the Chief of Staff, with the approval of the Secretary of the Army, may delegate to or prescribe for him. Orders issued by the Vice Chief of Staff in performing such duties have the same effect as those issued by the Chief of Staff.

(d) When there is a vacancy in the office of Chief of Staff or during the absence or disability of the Chief of Staff—

(1) the Vice Chief of Staff shall perform the duties of the Chief of Staff until a successor is appointed or the absence or disability ceases; or

(2) if there is a vacancy in the office of the Vice Chief of Staff or the Vice Chief of Staff is absent or disabled, unless the President directs otherwise, the most senior officer of the Army in the Army Staff who is not absent or disabled and who is not restricted in performance of duty shall perform the duties of the Chief of Staff until a successor to the Chief of Staff or the Vice Chief of Staff is appointed or until the absence or disability of the Chief of Staff or Vice Chief of Staff ceases, whichever occurs first.

(Aug. 10, 1956, ch. 1041, 70A Stat. 162, § 3035; Aug. 6, 1958, P.L. 85–599, § 6(a), 72 Stat 519; redesignated § 3034 and amended P.L. 99–433, § 502(d), Oct. 1, 1986, 100 Stat. 1041 [former § 3034 redesignated § 3033].)

§ 3035. Deputy Chiefs of Staff and Assistant Chiefs of Staff

(a) The Deputy Chiefs of Staff and the Assistant Chiefs of Staff shall be general officers detailed to those positions.

(b) The number of Deputy Chiefs of Staff and Assistant Chiefs of Staff shall be prescribed by the Secretary, except that—

(1) there may not be more than five Deputy Chiefs of Staff; and

(2) there may not be more than three Assistant Chiefs of Staff.

(Added P.L. 99–433, § 502(e), Oct. 1, 1986, 100 Stat. 1042 [former § 3035 redesignated § 3034].)

§ 3036. Chiefs of branches: appointment; duties

(a) There are in the Army the following officers:

(1) Chief of Engineers.

(2) Surgeon General.

(3) Judge Advocate General.

(4) Chief of Chaplains.

(b) Each officer named in subsection (a), except the Judge Advocate General, shall be appointed by the President, by and with the advice and consent of the Senate, from officers above the grade of major who—

(1) have shown by extensive duty in the branch concerned, or by similar duty, that they are qualified for the appointment; and

(2) have been recommended by a board under subsection (e).

Each officer covered by the preceding sentence, except the Surgeon General, shall be appointed in the regular grade of major general. The Surgeon General may be appointed from officers in any corps of the Army Medical Department and, while so serving, has the grade of lieutenant general. The Judge Advocate General shall be appointed as prescribed in section 3037 of this title.

(c) An officer appointed under subsection (b) normally holds office for four years. However, the President may terminate or extend the appointment at any time.

(d)(1) Each officer named in subsection (a) shall perform duties prescribed by the Secretary of the Army and by law.

(2) Under the supervision of the Secretary, the Chief of Engineers may accept orders to provide services to another department, agency, or instrumentality of the United States or to a State or political subdivision of a State. The Chief of Engineers may provide any part of those services by contract. Services may be provided to a State, or to a political subdivision of a State, only if—

(A) the work to be undertaken on behalf of non-Federal interests involves Federal assistance and the head of the department or agency providing Federal assistance for the work does not object to the provision of services by the Chief of Engineers; and

(B) the services are provided on a reimbursable basis.

(3) In this subsection, the term "State" includes the several States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, territories and possessions of the United States, and Indian tribes.

(e) For each office to be filled under subsection (b), the Secretary shall select a board of five general officers, including the incumbent, if any, of the office, and at least two officers, if available, in a grade above major general who have had extensive service in the branch concerned. The Secretary shall give the board a list of the officers to be considered and shall specify the number of officers, not less than three, to be recommended. The list shall include—

(1) the name of each officer of the Regular Army who is appointed in, or assigned to, that branch, and whose regular grade is colonel;

(2) the name of each officer whose regular grade is above colonel, who has shown by extensive duty in that branch, or by similar duty, that he is qualified for the appointment;

(3) to the extent that the Secretary determines advisable, the name of each officer of the Regular Army who is appointed in, or assigned to, that branch, and whose regular grade is lieutenant colonel, in the order in which their names appear on the applicable promotion lists; and

(4) to the extent that the Secretary considers advisable, the name of each regular or reserve officer on active duty in a grade above lieutenant colonel who has shown by extensive duty in that branch, or by similar duty, that he is qualified for the appointment.

From these officers, the board shall recommend by name the number prescribed by the Secretary, and the President may appoint any officer so recommended. If the President declines to appoint any of the recommended officers, or if the officer nominated cannot be appointed because of advice by the Senate, the Secretary shall convene a board to recommend additional officers. An officer who is recommended but not appointed shall be considered not to have been recommended. This does not affect his eligibility for selection and recommendations for the grade of brigadier general or major general under section 3306 or 3307 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 163; Oct. 22, 1965, P.L. 89–288, § 1, 79 Stat. 1050; Nov. 2, 1966, P.L. 89–718, § 24, 80 Stat. 1119; Oct. 12, 1982, P.L. 97–295, § 1(38), 96 Stat. 1296; Nov. 17, 1986, P.L. 99–662, § 922, 100 Stat. 4194; April 21, 1987, P.L. 100–26, § 7(a)(10), 101 Stat. 278; Oct. 31, 1992, P.L 102–580, § 211, 106 Stat. 4831; Feb. 10, 1996, P.L. 104–106, § 506(a), 110 Stat. 296; P.L. 104–201, § 1074(a)(18), Sept. 23, 1996, 110 Stat. 2660.)

§ 3037. Judge Advocate General, Assistant Judge Advocate General, and general officers of Judge Advocate General's Corps: appointment; duties

(a) The President, by and with the advice and consent of the Senate, shall appoint the Judge Advocate General, the Assistant Judge Advocate General, and general officers of the Judge Advocate General's Corps, from officers of the Judge Advocate General's Corps, who are recommended by the Secretary of the Army. An officer appointed as the Judge Advocate General or Assistant Judge Advocate General normally holds office for four years. However, the President may terminate or extend the appointment at any time. If an officer who is so appointed holds a lower regular grade, he shall be appointed in the regular grade of major general.

(b) The Judge Advocate General shall be appointed from those officers who at the time of appointment are members of the bar of

a Federal court or the highest court of a State or Territory, and who have had at least eight years of experience in legal duties as commissioned officers.

(c) The Judge Advocate General, in addition to other duties prescribed by law—

(1) is the legal adviser of the Secretary of the Army and of all officers and agencies of the Department of the Army;

(2) shall direct the members of the Judge Advocate General's Corps in the performance of their duties; and

(3) shall receive, revise, and have recorded the proceedings of courts of inquiry and military commissions.

(d) Under regulations prescribed by the Secretary of Defense, the Secretary of the Army, in selecting an officer for recommendation to the President under subsection (a) for appointment as the Judge Advocate General or Assistant Judge Advocate General, shall ensure that the officer selected is recommended by a board of officers that, insofar as practicable, is subject to the procedures applicable to selection boards convened under chapter 36 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 164; Sept. 2, 1958, P.L. 85–861, § 33(a)(18), 72 Stat. 1565; Oct. 5, 1994, P.L. 103–337, § 504(a), 108 Stat. 2750.)

§ 3038. Office of Army Reserve: appointment of Chief

(a) There is in the executive part of the Department of the Army an Office of the Army Reserve which is headed by a chief who is the adviser to the Chief of Staff on Army Reserve matters.

(b) APPOINTMENT.—(1) The President, by and with the advice and consent of the Senate, shall appoint the Chief of Army Reserve from general officers of the Army Reserve who have had at least 10 years of commissioned service in the Army Reserve.

(2) The Secretary of Defense may not recommend an officer to the President for appointment as Chief of Army Reserve unless the officer—

(A) is recommended by the Secretary of the Army; and

(B) is determined by the Chairman of the Joint Chiefs of Staff, in accordance with criteria and as a result of a process established by the Chairman, to have significant joint duty experience.

(3) An officer on active duty for service as the Chief of Army Reserve shall be counted for purposes of the grade limitations under sections 525 and 526 of this title.

(4) Until October 1, 2003, the Secretary of Defense may waive subparagraph (B) of paragraph (2) with respect to the appointment of an officer as Chief of Army Reserve if the Secretary of the Army requests the waiver and, in the judgment of the Secretary of Defense—

(A) the officer is qualified for service in the position; and

(B) the waiver is necessary for the good of the service.

Any such waiver shall be made on a case-by-case basis.

(c) TERM; REAPPOINTMENT; GRADE.—(1) The Chief of Army Reserve is appointed for a period of four years, but may be removed for cause at any time. An officer serving as Chief of Army Reserve may be reappointed for one additional four-year period.

(2) The Chief of Army Reserve, while so serving, holds the grade of lieutenant general.

(d) BUDGET.—The Chief of Army Reserve is the official within the executive part of the Department of the Army who, subject to the authority, direction, and control of the Secretary of the Army and the Chief of Staff, is responsible for justification and execution of the personnel, operation and maintenance, and construction budgets for the Army Reserve. As such, the Chief of Army Reserve is the director and functional manager of appropriations made for the Army Reserve in those areas.

(e) FULL TIME SUPPORT PROGRAM.—The Chief of Army Reserve manages, with respect to the Army Reserve, the personnel program of the Department of Defense known as the Full Time Support Program.

(f) ANNUAL REPORT.—(1) The Chief of Army Reserve shall submit to the Secretary of Defense, through the Secretary of the Army, an annual report on the state of the Army Reserve and the ability of the Army Reserve to meet its missions. The report shall be prepared in conjunction with the Chief of Staff of the Army and may be submitted in classified and unclassified versions.

(2) The Secretary of Defense shall transmit the annual report of the Chief of Army Reserve under paragraph (1) to Congress, together with such comments on the report as the Secretary considers appropriate. The report shall be transmitted at the same time each year that the annual report of the Secretary under section 113 of this title is submitted to Congress.

(Added P.L. 90–168, § 2(16), Dec. 1, 1967, 81 Stat. 523, § 3019; transferred, redesignated § 3038, and amended P.L. 99–433, §§ 501, 502(g), Oct. 1, 1986, 100 Stat. 1034, 1042 [former § 3038 repealed P.L. 89–718, § 25(a), Nov. 2, 1966; P.L. 103–337, § 1672(c)(1), Oct. 5, 1994, 108 Stat. 3015]; P.L. 104–201, § 1212(a), Sept. 23, 1996, 110 Stat. 2691; P.L. 106–65, § 554(b), Oct. 5, 1999, 113 Stat. 617; P.L. 106–398, § 1[507(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–102.)

§ 3039. Deputy and assistant chiefs of branches

(a) Each officer named in section 3036 of this title shall have, in addition to the assistants prescribed by subsections (b) and (c) and by section 3037 of this title, such deputies and assistants as the Secretary of the Army may prescribe. Each such deputy and assistant shall be an officer detailed by the Secretary to that position from the officers of the Army for a tour of duty of not more than four years, under a procedure prescribed by the Secretary similar to that prescribed in section 3036 of this title.

(b) There is an Assistant Surgeon General appointed from the officers of the Dental Corps, as prescribed in section 3036 of this title. The Assistant Surgeon General is Chief of the Dental Corps and is responsible for making recommendations to the Surgeon General and through the Surgeon General to the Chief of Staff on all matters concerning dentistry and the dental health of the Army. An appointee who holds a lower regular grade shall be appointed in the regular grade of major general.

(c) There are two assistants to the Chief of Engineers appointed as prescribed in section 3036 of this title. An appointee who holds a lower regular grade shall be appointed in the regular grade of brigadier general.

(Aug. 10, 1956, ch. 1041, 70A Stat. 165, § 3040; Oct. 20, 1978, P.L. 95–485, § 805(a), 92 Stat. 1621; redesignated § 3039 and amended Oct. 1, 1986, P.L. 99–433, § 502, 100 Stat. 1042 [former § 3039 repealed P.L. 99–433, § 502(f)(1)].)

[§ 3040. Repealed. P.L. 103–337, § 904(b)(1), Oct. 5, 1994, 108 Stat. 2827]

CHAPTER 307—THE ARMY

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§ 3061. Regulations

The President may prescribe regulations for the government of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 165.)

§ 3062. Policy; composition; organized peace establishment

(a) It is the intent of Congress to provide an Army that is capable, in conjunction with the other armed forces, of—

(1) preserving the peace and security, and providing for the defense, of the United States, the Territories, Commonwealths, and possessions, and any areas occupied by the United States;

(2) supporting the national policies;

(3) implementing the national objectives; and

(4) overcoming any nations responsible for aggressive acts that imperil the peace and security of the United States.

(b) In general, the Army, within the Department of the Army, includes land combat and service forces and such aviation and water transport as may be organic therein. It shall be organized, trained, and equipped primarily for prompt and sustained combat incident to operations on land. It is responsible for the preparation of land forces necessary for the effective prosecution of war except as otherwise assigned and, in accordance with integrated joint mobilization plans, for the expansion of the peacetime components of the Army to meet the needs of war.

(c) The Army consists of—

(1) the Regular Army, the Army National Guard of the United States, the Army National Guard while in the service of the United States and the Army Reserve; and

(2) all persons appointed or enlisted in, or conscripted into, the Army without component.

(d) The organized peace establishment of the Army consists of all—

(1) military organizations of the Army with their installations and supporting and auxiliary elements, including combat, training, administrative, and logistic elements; and

(2) members of the Army, including those not assigned to units;

necessary to form the basis for a complete and immediate mobilization for the national defense in the event of a national emergency.

(Aug. 10, 1956, ch. 1041, 70A Stat. 166.)

§ 3063. Basic branches

(a) The Secretary of the Army may assign members of the Army to its basic branches. The basic branches are—

(1) Infantry;
(2) Armor;
(3) Artillery;
(4) Corps of Engineers;
(5) Signal Corps;
(6) Adjutant General's Corps;
(7) Quartermaster Corps;
(8) Finance Corps;
(9) Ordnance Corps;
(10) Chemical Corps;
(11) Transportation Corps;
(12) Military Police Corps; and
(13) such other basic branches as the Secretary considers necessary.

(b) The Secretary may discontinue or consolidate basic branches of the Army for the duration of any war, or of any national emergency declared by Congress.

(c) The Secretary may not assign to a basic branch any commissioned officer appointed in a special branch.

(Aug. 10, 1956, ch. 1041, 70A Stat. 166.)

§ 3064. Special branches

(a) The special branches of the Army consist of commissioned officers of the Regular Army appointed therein, other members of the Army assigned thereto by the Secretary of the Army, and the sections prescribed in this chapter. The special branches are—

(1) each corps of the Army Medical Department;
(2) the Judge Advocate General's Corps;
(3) the Chaplains; and
(4) such other special branches as may be established by the Secretary of the Army under subsection (b).

(b) The Secretary of the Army may establish special branches for the Army and may assign commissioned officers (other than officers of the Regular Army) and members to such branches.

(c) Commissioned officers of the Regular Army may be appointed in a special branch, but the Secretary may not assign any officer of the Regular Army to a special branch.

(Aug. 10, 1956, ch. 1041, 70A Stat. 167; June 4, 1968, P.L. 90–329, 82 Stat. 170; Dec. 12, 1980, P.L. 96–513, § 231, 94 Stat. 2886; July 10, 1981, P.L. 97–22, § 5(a), 95 Stat. 128.)

§ 3065. Assignment and detail: officers assigned or detailed to basic and special branches

(a) Commissioned officers of the Army may be detailed as general staff officers and as inspectors general.

(b) Members of the Army may be detailed to duty in particular fields specified by the Secretary, including intelligence, counterintelligence, and military government.

(c) Members of the Army appointed in or assigned to one branch may be detailed for duty with any other branch.

(d) Members of the Army while not on active duty may be assigned to any basic or special branch, or to such other branches or groups, and to such organizations, as the Secretary considers appropriate.

(e) No officer of the Army may be assigned to perform technical, scientific, or other professional duties unless he is qualified to perform those duties and meets professional qualifications at least as strict as those in effect on June 28, 1950. If the duties to which an officer is assigned involve professional work that is the same as or is similar to that usually performed in civil life by a member of a learned profession, such as engineering, law, medicine, or theology, the officer must have the qualifications, by education, training, or experience, equal to or similar to those usually required of members of that profession, unless the exigencies of the situation prevent.

(Aug. 10, 1956, ch. 1041, 70A Stat. 167.)

[§ 3066. Repealed. P.L. 96–513, § 201, Dec. 12, 1980, 94 Stat. 2878]

§ 3067. Army Medical Department

There is an Army Medical Department in the Army. The Army Medical Department consists of—

(1) the Surgeon General;
(2) the Assistant Surgeons General;
(3) the Medical Corps;
(4) the Dental Corps;
(5) the Veterinary Corps;
(6) the Medical Service Corps;
(7) the Army Nurse Corps; and
(8) the Army Medical Specialist Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 168; Sept. 2, 1958, P.L. 85–861, § 1(60), 72 Stat. 1462; June 4, 1968, P.L. 90–329, 82 Stat. 170.)

§ 3068. Medical Service Corps: organization; Chief and assistant chiefs

There is a Medical Service Corps in the Army. The Medical Service Corps consists of—

(1) the Chief of the Medical Service Corps, who shall be appointed by the Secretary of the Army from among the offi-

cers of the Medical Service Corps whose regular grade is above captain;

(2) the assistant chiefs of the Medical Service Corps, who shall be designated by the Surgeon General from officers in that Corps and who shall be his consultants on activities relating to their sections;

(3) commissioned officers of the Regular Army appointed therein;

(4) other members of the Army assigned thereto by the Secretary of the Army; and

(5) the following sections—

(A) the Pharmacy, Supply, and Administration Section;

(B) the Medical Allied Sciences Section;

(C) the Sanitary Engineering Section;

(D) the Optometry Section; and

(E) other sections considered necessary by the Secretary of the Army.

(Added P.L. 89–603, § 1(1), Sept. 24, 1966, 80 Stat. 846; amended P.L. 97–295, § 1(37), Oct. 12, 1982, 96 Stat. 1296.)

§ 3069. Army Nurse Corps: composition; Chief and assistant chief; appointment; grade

(a) The Army Nurse Corps consists of the Chief and assistant chief of that corps and other officers in grades prescribed by the Secretary of the Army.

(b) The Secretary of the Army shall appoint the Chief from the officers of the Regular Army in that corps whose regular grade is above lieutenant colonel and who are recommended by the Surgeon General. An appointee who holds a lower regular grade shall be appointed in the regular grade of brigadier general. The Chief serves during the pleasure of the Secretary, but not for more than four years, and may not be reappointed to the same position.

(c) The Surgeon General shall appoint the assistant chief from the officers of the Regular Army in that corps whose regular grade is above lieutenant colonel. The assistant chief serves during the pleasure of the Surgeon General, but not for more than four years and may not be reappointed to the same position.

(Aug. 10, 1956, ch. 1041, 70A Stat. 168; Aug. 21, 1957, P.L. 85–155, § 101(1), 71 Stat. 375; Sept. 7, 1962, P.L. 87–649, § 6(b)(1), 76 Stat. 494; Sept. 30, 1966, P.L. 89–609, § 1(1), 80 Stat. 852; Nov. 8, 1967, P.L. 90–130, § 1(8) (A), 81 Stat. 374; P.L. 104–201, § 502(a), Sept. 23, 1996, 110 Stat. 2511.)

§ 3070. Army Medical Specialist Corps: organization; Chief and assistant chiefs

(a) The Army Medical Specialist Corps consists of the Chief and assistant chiefs of that corps, other officers in grades prescribed by the Secretary of the Army, and the following sections:

(1) The Dietitian Section.

(2) The Physical Therapist Section.

(3) The Occupational Therapist Section.

(4) The Physician Assistant Section.[1]

[1] Section 551 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (P.L. 102–190, 105 Stat. 1370) provides:

(5) The Chiropractic Section.

(b) The Secretary of the Army shall appoint the Chief from the officers of the Regular Army in that corps whose regular grade is above captain and who are recommended by the Surgeon General. The Chief serves during the pleasure of the Secretary, but not for more than four years, and may not be reappointed.

(c) The Surgeon General shall appoint up to five assistant chiefs from officers of the Regular Army in that corps whose regular grade is above captain. Each assistant chief is the chief of a section of that corps. An assistant chief serves during the pleasure of the Surgeon General, but not for more than four years, and may not be reappointed to the same position.

(d) Chiropractors who are qualified under regulations prescribed by the Secretary of the Army may be appointed as commissioned officers in the Chiropractic Section of the Army Medical Specialist Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 169; Aug. 21, 1957, P.L. 85–155, § 101(2), 71 Stat. 375; Sept. 7, 1962, P.L. 87–649, § 6(b)(2), (3), 76 Stat. 494; Sept. 30, 1966, P.L. 89–609, § 1(2), (3), 80 Stat. 852; Nov. 8, 1967, P.L. 90–130, § 1(8)(B), 81 Stat. 374; Dec. 5, 1991, P.L. 102–190, § 551(a), 105 Stat. 1370; Oct. 23, 1992, P.L. 102–484, § 505(a), 106 Stat. 2404.)

[§ 3071. Repealed. P.L. 95–485, § 820(b), Oct. 20, 1978, 92 Stat. 1627]

§ 3072. Judge Advocate General's Corps

There is a Judge Advocate General's Corps in the Army. The Judge Advocate General's Corps consists of—

(1) the Judge Advocate General;

(2) the Assistant Judge Advocate General;

(3) three officers in the grade of brigadier general;

(4) commissioned officers of the Regular Army appointed therein; and

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SEC. 551. ESTABLISHMENT OF PHYSICIAN ASSISTANT SECTION IN ARMY MEDICAL SPECIALIST CORPS.

(a) [Amended § 3070(c)].

(b) APPOINTMENT OF ASSISTANT CHIEF.—Notwithstanding the requirement in subsection (c) of section 3070 of title 10, United States Code, as amended by subsection (a), with respect to the appointment of officers of the Regular Army as chiefs of sections of the Army Medical Specialist Corps, a warrant officer of the Army who is appointed as a reserve commissioned officer and assigned to the Army Medical Specialist Corps for service in the Physician Assistant Section of that Corps during the five-year period beginning on [Dec. 5, 1991] may be appointed as an assistant chief of that Corps and chief of the Physician Assistant Section.

(c) RETIREMENT.—A member of the Army who on [Dec. 5, 1991] is a warrant officer serving on active duty (other than for training) as a physician assistant and who is subsequently appointed as a commissioned officer in, or is assigned to, the Physician Assistant Section of the Army Medical Specialist Corps may elect at the time of the officer's retirement after 20 years or more of active service that could be credited to the officer under section 511 of the Career Compensation Act of 1949, as amended—

(1) to revert to the highest warrant officer grade in which the officer served on active duty (other than for training) satisfactorily (as determined by the Secretary of the Army) for a period of more than 30 days; and

(2) to be retired under chapter 65 of title 10, United States Code.

(d) CONSTRUCTIVE CREDIT FOR DETERMINATION OF GRADE AND RANK.—(1) For the purpose of determining the grade and rank within grade of a person who is appointed as a commissioned officer in the Army Medical Specialist Corps for service in the Physician Assistant Section, or who is assigned to the Army Medical Specialist Corps for service as a physician assistant, and who on [Dec. 5, 1991] is a warrant officer and a physician assistant on active duty or in an active reserve status, the Secretary of the Army shall credit that person at the time of such appointment with any service on active duty, or in an active reserve status, as a physician assistant performed as a member of the Armed Forces before that appointment.

(2) The Secretary of Defense shall prescribe regulations to carry out this subsection.

(5) other members of the Army assigned thereto by the Secretary of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 169.)

§ 3073. Chaplains

There are chaplains in the Army. The Chaplains include—

(1) the Chief of Chaplains;

(2) commissioned officers of the Regular Army appointed as chaplains; and

(3) other officers of the Army appointed as chaplains in the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 170.)

§ 3074. Commands: territorial organization; engineer tactical units

(a) Except as otherwise prescribed by law or by the Secretary of Defense, the Army shall be divided into such commands, forces, and organizations as may be prescribed by the Secretary of the Army.

(b) For Army purposes, the United States, the Territories, Commonwealths, and possessions, and other places in which the Army is stationed or is operating may be divided into such areas as may be directed by the Secretary. Officers of the Army may be assigned to command Army activities, installations, and personnel in those areas. In the discharge of the Army's functions or other functions authorized by law, officers so assigned have the duties and powers prescribed by the Secretary.

(c) Such part of the Corps of Engineers as the President directs shall be formed into tactical units organized as he prescribes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 170; Oct. 1, 1986, P.L. 99–433, § 503, 100 Stat. 1042.)

§ 3075. Regular Army: composition

(a) The Regular Army is the component of the Army that consists of persons whose continuous service on active duty in both peace and war is contemplated by law, and of retired members of the Regular Army.

(b) The Regular Army includes—

(1) the officers and enlisted members of the Regular Army;

(2) the professors, director of admissions, and cadets of the United States Military Academy; and

(3) the retired officers and enlisted members of the Regular Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 170; Aug. 6, 1958, P.L. 85–600, § 1(1), 72 Stat. 522; Oct. 30, 1978, P.L. 95–551, § 2, 92 Stat. 2069; Oct. 12, 1982, P.L. 97–295, § 1(39), 96 Stat. 1297.)

[§§ 3076 to 3080. Repealed. P.L. 103–337, § 1661(a)(3)(A), Oct. 5, 1994, 108 Stat. 2980]

§ 3081. Dental Corps: Chief, functions

(a) The Chief of the Dental Corps shall be an officer of that corps appointed as prescribed in section 3039 of this title.

(b) Under such regulations as the Secretary of the Army may prescribe, all dental functions of the Army shall be under the direc-

tion of the Chief of the Dental Corps. All matters relating to dentistry shall be referred to the Chief of the Dental Corps.

(c) The Chief of the Dental Corps shall—

(1) establish professional standards and policies for dental practice;

(2) initiate and recommend action pertaining to organization requirements and utilization of the Dental Corps and dental auxiliary strength, appointments, advancement, training assignments, and transfer of dental personnel; and

(3) serve as the adviser to the Office of the Surgeon General on all matters relating directly to dentistry.

(d) Under such regulations as the Secretary of the Army may prescribe, dental and dental auxiliary personnel throughout the Army shall be organized into units commanded by a designated Dental Corps Officer. Such officer will be directly responsible to the commander of installations, organizations, and activities for all professional and technical matters and such administrative matters as may be prescribed by regulation.

(Added P.L. 95–485, § 805(b)(1), Oct. 20, 1978, 92 Stat. 1621; amended P.L. 99–433, § 502(f)(3), Oct. 1, 1986, 100 Stat. 1042.)

[§ 3082. Transferred to § 10542]

§ 3083. Public Affairs Specialty

There is a career field in the Army known as the Public Affairs Specialty. Members of the Army with the Public Affairs Specialty are—

(1) the Chief of Public Affairs;

(2) commissioned officers of the Army in the grade of major or above who are selected and specifically educated, trained, and experienced to perform as professional public affairs officers for the remainder of their careers; and

(3) other members of the Army assigned to public affairs positions by the Secretary of the Army.

(Added P.L. 105–85, § 596(a), Nov. 18, 1997, 111 Stat. 1765.)

PART II—PERSONNEL

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CHAPTER 331—STRENGTH

Sec.
3201. Officers on active duty: minimum strength based on requirements.
[3202 to 3207. Repealed.]
[3209. Repealed.]
3210. Regular Army: strength in grade; general officers.
[3211 to 3225. Repealed.]
[3230. Repealed.]

§ 3201. Officers on active duty: minimum strength based on requirements

(a) The Secretary of the Army shall ensure that (beginning with fiscal year 1999) the strength at the end of each fiscal year of officers on active duty is sufficient to enable the Army to meet at least that percentage of the programmed manpower structure for officers for the active component of the Army that is provided for in the most recent Defense Planning Guidance issued by the Secretary of Defense.

(b) The number of officers on active duty shall be counted for purposes of this section in the same manner as applies under section 115(a)(1) of this title.

(c) In this section:

(1) The term "programmed manpower structure" means the aggregation of billets describing the full manpower requirements for units and organizations in the programmed force structure.

(2) The term "programmed force structure" means the set of units and organizations that exist in the current year and that is planned to exist in each future year under the then-current Future-Years Defense Program.

(Added P.L. 104–106, § 505(a)(1), Feb. 10, 1996, 110 Stat. 295 [former 3201 repealed by § 202 of P.L. 96–513].)

[§ 3202. Repealed. P.L. 101–510, § 403(b)(1)(A), Nov. 5, 1990, 104 Stat. 1545]

[§§ 3203 to 3207. Repealed. P.L. 96–513, § 202, Dec. 12, 1980, 94 Stat. 2878]

[§ 3209. Repealed. P.L. 96–513, § 202, Dec. 12, 1980, 94 Stat. 2878]

§ 3210. Regular Army: strength in grade; general officers

(a) Subject to section 526 of this title, the authorized strength of the Regular Army in general officers on the active-duty list is 75/10,000 of the authorized strength of the Regular Army in commission officers on the active-duty list.

(b) The authorized strength of each of the following branches—

(1) each corps of the Army Medical Department; and

(2) the Chaplains;

in general officers on the active-duty list of the Regular Army is 5/1,000 of the authorized strength of the branch concerned in commissioned officers on the active-duty list of the Regular Army. Not more than one-half of the authorized strength in general officers in such a branch may be in a regular grade above brigadier general.

(c) When the application of the percentages and ratios specified in this section results in a fraction, a fraction of one-half or more is counted as one, and a fraction of less than one-half is disregarded.

(Aug. 10, 1956, ch. 1041, 70A Stat. 174; Sept. 2, 1958, P.L. 85–861, § 1(66), 72 Stat. 1463; Sept. 24, 1966, P.L. 89–603, § 1(2), 80 Stat. 846; June 4, 1968, P.L. 90–329, 82 Stat. 170; Dec. 12, 1980, P.L. 96–513, § 502(5), 94 Stat. 2909; July 10, 1981, P.L. 97–22, § 5(b), 95 Stat. 128; Dec. 5, 1991, P.L.102–190, § 1061(a)(20)(A), 105 Stat. 1473.)

[§ 3211. Repealed. P.L. 96–513, § 202, Dec. 12, 1980, 94 Stat. 2878]

[§ 3212. Repealed. P.L. 103–337, § 1662(a)(3), Oct. 5, 1994, 108 Stat. 2988]

[§§ 3213, 3214. Repealed. P.L. 96–513, § 202, Dec. 12, 1980, 94 Stat. 2878]

[§ 3215. Repealed. P.L. 95–485, § 820(c)(3), Oct. 20, 1978, 92 Stat. 1627]

[§ 3216. Repealed. P.L. 96–513, § 202, Dec. 12, 1980, 94 Stat. 2878]

[§§ 3217 to 3225. Repealed. P.L. 103–337, § 1662(a)(3), Oct. 5, 1994, 108 Stat. 2988]

[§ 3230. Repealed. P.L. 96–513, § 232, Dec. 12, 1980, 94 Stat. 2886]

CHAPTER 333—ENLISTMENTS

Sec.
3251. Definition.
[3252. Repealed.]
3253. Army: persons not qualified.
[3254 to 3256. Repealed.]
3258. Regular Army: reenlistment after service as an officer.
[3259 to 3261. Repealed.]
3262. Army: percentage of high-school graduates.
[3263. Repealed.]

§ 3251. Definition

In this chapter, the term "enlistment" means original enlistment or reenlistment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 177; Dec. 4, 1987, P.L. 100–180, § 1231(19)(A), 101 Stat. 1161.)

[§ 3252. Repealed. P.L. 90–235, § 2(a)(2)(B), Jan. 2, 1968, 81 Stat. 756]

§ 3253. Army: persons not qualified

In time of peace, no person may be accepted for original enlistment in the Army unless he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under the applicable provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(Aug. 10, 1956, ch. 1041, 70A Stat. 177; Aug. 17, 1961, P.L. 87–143, § 1(1), 75 Stat. 364; Jan. 2, 1968, P.L. 90–235, § 2(a)(2)(A), 81 Stat. 756; Dec. 12, 1980, P.L. 96–513, § 512(3), 94 Stat. 2929.)

[§§ 3254 to 3256. Repealed. P.L. 90–235, § 2(a)(2)(B), Jan. 2, 1968, 81 Stat. 756]

§ 3258. Regular Army: reenlistment after service as an officer

(a) Any former enlisted member of the Regular Army who has served on active duty as a Reserve officer of the Army, or who was discharged as an enlisted member to accept a temporary appointment as an officer of the Army, is entitled to be reenlisted in the Regular Army in the enlisted grade that he held before his service as an officer, without loss of seniority or credit for service, regardless of the existence of a vacancy in his grade or of a physical disability incurred or having its inception in line of duty, if (1) his service as an officer is terminated by an honorable discharge or he is relieved from active duty for a purpose other than to await appellate review of a sentence that includes dismissal or dishonorable discharge, and (2) he applies for reenlistment within six months (or such other period as the Secretary of the Army prescribes for exceptional circumstances) after termination of that service.

(b) A person is not entitled to be reenlisted under this section if—

(1) the person was discharged or released from active duty as a Reserve officer on the basis of a determination of—

(A) misconduct;

(B) moral or professional dereliction;

(C) duty performance below prescribed standards for the grade held; or

(D) retention being inconsistent with the interests of national security; or

(2) the person's former enlisted status and grade was based solely on the participation by that person in a precommissioning program that resulted in the Reserve commission held by that person during the active duty from which the person was released or discharged.

(Aug. 10, 1956, ch. 1041, 70A Stat. 179; Aug. 8, 1958, P.L. 85–603, § 1(1), 72 Stat. 526; Oct. 23, 1992, P.L. 102–484, § 520(a), 106 Stat. 2408.)

[§ 3259 to 3261. Repealed. P.L. 103–337, § 1662(b)(3), Oct. 5, 1994, 108 Stat. 2990]

§ 3262. Army: percentage of high-shool graduates

Notwithstanding section 520(b) of this title, of the males with no prior military service who are enlisted or inducted into the Army during any fiscal year, the number who are not high-school graduates may not exceed, as of the end of the fiscal year, 35 percent of all such persons.

(Added P.L. 99–661, § 402(a), Nov. 14, 1986, 100 Stat. 3859 [former § 3262 repealed P.L. 90–235, § 2(a)(2)(B), Jan. 2, 1968]; amended P.L. 100–370, § 1(a)(2), July 19, 1988, 102 Stat. 840.)

[§ 3263. Repealed. P.L. 90–235, § 2(a)(2)(B), Jan. 2, 1968, 81 Stat. 756]

CHAPTER 335—APPOINTMENTS IN THE REGULAR ARMY

Sec.
3281. Commissioned officer grades.
3282. General officers: title of office.
3283. Commissioned officers: appointment without specification of branch; transfer between branches.
[3284 to 3300. Repealed.]
[3302 to 3309. Repealed.]
3310. Warrant officers: original appointment; qualifications.
[3311 to 3314. Repealed.]

§ 3281. Commissioned officer grades

The commissioned grades in the Regular Army are:

(1) Major general.
(2) Brigadier general.
(3) Colonel.
(4) Lieutenant colonel.
(5) Major.
(6) Captain.
(7) First lieutenant.
(8) Second lieutenant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 181.)

§ 3282. General officers: title of office

An officer holding an appointment as a general officer in the Regular Army may be called a general officer in the Regular Army. In addition, a general officer of the Regular Army in the Medical Corps, Dental Corps, Veterinary Corps, Judge Advocate General's Corps, or the Chaplains, may be called a general officer of that branch.

(Aug. 10, 1956, ch. 1041, 70A Stat. 181.)

§ 3283. Commissioned officers: appointment without specification of branch; transfer between branches

(a) Appointments in commissioned grades in the Regular Army shall be made without specification of branch except in each of the special branches and as professors or director of admissions of the United States Military Academy.

(b) Commissioned officers appointed in the Regular Army without specification of branch shall be assigned, and may be transferred and reassigned, by the Secretary of the Army to branches other than the special branches, according to their professional qualifications and the needs of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 181; Aug. 6, 1958, P.L. 85–600, § 1(4), 72 Stat. 522; Oct. 20, 1978, P.L. 95–485, § 820(d)(1), 92 Stat. 1627; Oct. 30, 1978, P.L. 95–551, § 2, 92 Stat. 2069.)

[§§ 3284 to 3300. Repealed. P.L. 96–513, § 204, Dec. 12, 1980, 94 Stat. 2880]

[§§ 3302, 3303. Repealed. P.L. 96–513, § 204, Dec. 12, 1980, 94 Stat. 2880]

[§ 3304. Repealed. P.L. 90–130, § 1(10)(C), Nov. 8, 1967, 81 Stat 375]

[§§ 3305 to 3309. Repealed. P.L. 96–513, § 204, Dec. 12, 1980, 94 Stat. 2880]

§ 3310. Warrant officers: original appointment; qualifications

Original appointments as warrant officers in the Regular Army shall be made from persons who have served on active duty at least one year in the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 192.)

[§ 3311. Repealed. P.L. 95–485, § 820(d)(4), Oct. 20, 1978, 92 Stat. 1627]

[§§ 3312 to 3314. Repealed. P.L. 96–513, § 204, Dec. 12, 1980, 94 Stat. 2880]

[CHAPTER 337—APPOINTMENTS AS RESERVE OFFICERS—REPEALED]

[§ 3351. Transferred to § 12211]

[§ 3352. Transferred to § 12213]

[§§ 3353, 3354. Repealed effective Oct. 1, 1996. P.L. 103–337, § 1629(a), Oct. 5, 1994, 108 Stat. 2963]

[§ 3355. Repealed. P.L. 88–647, § 301(5), Oct. 13, 1964, 78 Stat. 1071]

[§§ 3357 to 3396. Repealed effective Oct. 1, 1996. P.L. 103–337, § 1629(a), Oct. 5, 1994, 108 Stat. 2963]

CHAPTER 339—TEMPORARY APPOINTMENTS

Sec.
[3441 to 3445. Repealed.]
3446. Retention on active duty.
[3447 to 3452. Repealed.]

[§§ 3441, 3442. Repealed. P.L. 96–513, § 207, Dec. 12, 1980, 94 Stat. 2884]

[§ 3443. Repealed. P.L. 85–861, § 36B(6), Sept. 2, 1958, 72 Stat. 1570]

[§§ 3444, 3445. Repealed. P.L. 96–513, § 207, Dec. 12, 1980, 94 Stat. 2884]

§ 3446. Retention on active duty

The President may retain on active duty a disabled officer until—

(1) the physical condition of the officer is such that the officer will not be further benefited by retention in a military hospital or a medical facility of the Department of Veterans Affairs; or

(2) the officer is processed for physical disability benefits provided by law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 196; Sept. 2, 1958, P.L. 85–861, § 1(81)(C), 72 Stat. 1480; Nov. 29, 1989, P.L. 101–189, § 1621(a)(10), 103 Stat. 1603; April 6, 1991, P.L. 102–25, § 701(g)(6), 105 Stat. 116.)

[§§ 3447 to 3449. Repealed. P.L. 96–513, §§ 207, 208, Dec. 12, 1980, 94 Stat. 2884]

[§ 3450. Repealed. P.L. 90–235, § 3(b)(1), Jan. 2, 1968, 81 Stat. 758]

[§§ 3451, 3452. Repealed. P.L. 96–513, § 207, Dec. 12, 1980, 94 Stat. 2884]

CHAPTER 341—ACTIVE DUTY

Sec.
3491. Non-regular officers: status.
[3492 to 3494. Repealed.]
[3495 to 3502. Repealed.]
3503. Retired commissioned officers: status.
[3504. Repealed.]

§ 3491. Non-regular officers: status

A commissioned officer of the Army, other than of the Regular Army, who is on active duty in any commissioned grade has the rights and privileges, and is entitled to the benefits, provided by law for a commissioned officer of the Army Reserve—

(1) whose reserve grade is that in which the officer not of the Regular Army is serving;

(2) who has the same length of service as the officer not of the Regular Army; and

(3) who is on active duty in his reserve grade.

(Aug. 10, 1956, ch. 1041, 70A Stat. 198.)

[§§ 3492, 3493. Repealed. P.L. 90–235, § 1 (a)(2), (b), Jan. 2, 1968, 81 Stat. 753]

[§ 3494. Repealed. P.L. 96–513, § 209(a), Dec. 12, 1980, 94 Stat. 2884]

[§§ 3495 to 3502. Repealed. P.L. 103–337, § 1662(f)(2), Oct. 5, 1994, 108 Stat. 2994.]

§ 3503. Retired commissioned officers: status

A retired commissioned officer of the Army who is on active duty is considered, for all purposes except promotion, to be an officer of the branch or organization to which he is assigned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 200.)

[§ 3504. Repealed. P.L. 96–513, § 210, Dec. 12, 1980, 94 Stat. 2884]

CHAPTER 343—SPECIAL APPOINTMENTS, ASSIGNMENTS, DETAILS, AND DUTIES

Sec.
[3531, 3532. Repealed.]
3533. Corps of Engineers: assignment or transfer of officers to duties involving civil functions.
3534. Corps of Engineers: detail of officers to assist Mayor of District of Columbia.
[3535. Repealed.]
3536. Leader of Army Band: appointment.
[3538 to 3542. Repealed.]
3543. Aides: detail; number authorized.
[3544 to 3546. Repealed.]
3547. Duties: chaplains; assistance required of commanding officers.
3548. Duties: warrant officers; limitations.

[§§ 3531, 3532. Repealed. P.L. 96–513, §§ 233(a), 234, Dec. 12, 1980, 94 Stat. 2887]

§ 3533. Corps of Engineers: assignment or transfer of officers to duties involving civil functions

Officers of the Corps of Engineers may be assigned or transferred to and from duties involving the civil functions of the Corps of Engineers only with the approval of the Secretary of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 201; Nov. 2, 1966, P.L. 89–718, § 26, 80 Stat. 1119.)

§ 3534. Corps of Engineers: detail of officers to assist Mayor of District of Columbia

The President may detail not more than three officers assigned to the Corps of Engineers to assist the Mayor of the District of Columbia in discharging his duties.

(Aug. 10, 1956, ch. 1041, 70A Stat. 201; Oct. 22, 1968, P.L. 90–623, § 2(5), 82 Stat. 1314; Dec. 12, 1980, P.L. 96–513, § 512(5) (A), (B), 94 Stat. 2929.)

[§ 3535. Repealed. P.L. 96–513, § 235, Dec. 12, 1980, 94 Stat. 2887]

§ 3536. Leader of Army Band: appointment

(a) The Secretary of the Army may appoint the leader of the Army band from the warrant officers of the Regular Army. The leader serves during the pleasure of the Secretary and may be returned to his former status in the discretion of the Secretary.

[(b) Repealed. P.L. 87–649, § 14c(5), Sept. 7, 1962, 76 Stat. 501.]

(c) Upon retirement, the leader of the Army band has the grade of warrant officer, with the retired pay to which he would have been entitled had he not been appointed leader.

(Aug. 10, 1956, ch. 1041, 70A Stat. 201; Sept. 7, 1962, P.L. 87–649, § 14c(5), 76 Stat. 501.)

[§§ 3538, 3539. Repealed. P.L. 90–235, § 4 (a)(2), (b)(1), Jan. 2, 1968, 81 Stat. 759, 760]

[§ 3540. Repealed. P.L. 88–647, § 301(7), Oct. 13, 1964, 78 Stat. 1071]

[§ 3541. Repealed. P.L. 103–337, § 1661(c)(2), Oct. 5, 1994, 108 Stat. 2982]

[§ 3542. Repealed. P.L. 103–337, § 1662(g)(2), Oct. 5, 1994, 108 Stat. 2996]

§ 3543. Aides: detail; number authorized

(a) Each major general of the Army is entitled to three aides selected by him from commissioned officers of the Army in any grade below major.

(b) Each brigadier general of the Army is entitled to two aides selected by him from commissioned officers of the Army in any grade below captain.

(Aug. 10, 1956, ch. 1041, 70A Stat. 202.)

[§§ 3544, 3545. Repealed. P.L. 90–235, § 4 (a)(6), (b)(1), Jan. 2, 1968, 81 Stat. 759, 760]

[§ 3546. Repealed. P.L. 85–861, § 36B(7), Sept. 2, 1958, 72 Stat. 1570]

§ 3547. Duties: chaplains; assistance required of commanding officers

(a) Each chaplain shall, when practicable, hold appropriate religious services at least once on each Sunday for the command to which he is assigned, and shall perform appropriate religious burial services for members of the Army who die while in that command.

(b) Each commanding officer shall furnish facilities, including necessary transportation, to any chaplain assigned to his command, to assist the chaplain in performing his duties.

(Aug. 10, 1956, ch. 1041, 70A Stat. 203.)

§ 3548. Duties: warrant officers; limitations

Under regulations prescribed by the President, a warrant officer may be assigned to perform duties that necessarily include those normally performed by a commissioned officer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 203.)

CHAPTER 345—RANK AND COMMAND

Sec.
[3571. Repealed.]
3572. Rank: commissioned officers serving under temporary appointments.
[3573, 3574. Repealed.]
3575. Rank: warrant officers.
[3576, 3578. Repealed.]
3579. Command: commissioned officers of Army Medical Department.
[3580. Repealed.]
3581. Command: chaplains.
[3582. Repealed.]
3583. Requirement of exemplary conduct.

[§ 3571. Repealed. P.L. 96–513, § 211, Dec. 12, 1980, 94 Stat. 2885]

§ 3572. Rank: commissioned officers serving under temporary appointments

The President may, in accordance with the needs of the Army, adjust dates of rank of commissioned officers of the Army serving in temporary grades.

(Aug. 10, 1956, ch. 1041, 70A Stat. 204.)

[§§ 3573, 3574. Repealed. P.L. 96–513, § 211, Dec. 12, 1980, 94 Stat. 2885]

§ 3575. Rank: warrant officers

Warrant officers rank next below second lieutenants and rank among themselves within each warrant officer grade under regulations to be prescribed by the Secretary of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 205.)

[§ 3576. Repealed. P.L. 90–235, § 5(a)(2), Jan. 2, 1968, 81 Stat. 761]

[§ 3578. Repealed. P.L. 90–235, § 5(a)(2), Jan. 2, 1968, 81 Stat. 761]

§ 3579. Command: commissioned officers of Army Medical Department

(a) Except as provided in subsection (b), a commissioned officer of the Army Medical Department is not entitled to exercise command because of his rank, except within the Army Medical Department.

(b) An officer of the Medical Service Corps may exercise command of troops that are not part of the Army Medical Department whenever authorized by the Secretary of the Army. The Secretary of the Army may delegate such authority to appropriate commanders as the interest of the Army may require.

(Aug. 10, 1956, ch. 1041, 70A Stat. 206; Sept. 2, 1958, P.L. 85–861, § 1 (60), (87), 72 Stat. 1462, 1482; Aug. 17, 1961, P.L. 87–142, 75 Stat. 364; June 4, 1968, P.L. 90–329, 82 Stat. 170; Dec. 12, 1980, P.L. 96–513, § 212(a), 94 Stat. 2885; Oct. 19, 1984, P.L. 98–525, § 1405(46), 98 Stat. 2625.)

[§ 3580. Repealed. P.L. 95–485, § 820(f), Oct. 20, 1978, 92 Stat. 1627]

§ 3581. Command: chaplains

A chaplain has rank without command.

(Aug. 10, 1956, ch. 1041, 70A Stat. 206.)

[§ 3582. Repealed. P.L. 96–513, § 211, Dec. 12, 1980, 94 Stat. 2885]

§ 3583. Requirement of exemplary conduct

All commanding officers and others in authority in the Army are required—

(1) to show in themselves a good example of virtue, honor, patriotism, and subordination;

(2) to be vigilant in inspecting the conduct of all persons who are placed under their command;

(3) to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Army, all persons who are guilty of them; and

(4) to take all necessary and proper measures, under the laws, regulations, and customs of the Army, to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge.

(Added P.L. 105–85, § 507(a)(1), Nov. 18, 1997, 111 Stat. 1726.)

[CHAPTER 347—REPEALED]

[§§ 3611, 3612. Repealed. P.L. 90–235, § 8(2), Jan. 2, 1968, 81 Stat. 764]

CHAPTER 349—MISCELLANEOUS PROHIBITIONS AND PENALTIES

Sec.
[3631 to 3633. Repealed.]
3634. Army band: may not be paid for performance outside Army post.
[3635 to 3638. Repealed.]
3639. Enlisted members: officers not to use as servants.

[§ 3631. Repealed. P.L. 90–235, § 7(b)(1), Jan. 2, 1968, 81 Stat. 763]

[§§ 3632, 3633. Repealed. P.L. 87–649, § 14c (6), (7), Sept. 7, 1962, 76 Stat. 501]

§ 3634. Army band: may not be paid for performance outside Army post

(a) PROHIBITION.—Except as provided in subsection (b), no Army band or member thereof may receive remuneration for furnishing music outside the limits of an Army post in competition with local civilian musicians.

(b) RECORDINGS.—(1) Any Army band designated as a special band may produce recordings for commercial sale.

(2) Amounts received as proceeds from the sale of any such recordings may be credited to applicable appropriations of the Department of the Army for expenses of Army bands.

(3) The Secretary of the Army shall prescribe regulations governing the accounting of such proceeds.

(Aug. 10, 1956, ch. 1041, 70A Stat. 207; Nov. 5, 1990, P.L. 101–510, § 327(a), 104 Stat. 1531.)

[§ 3635. Repealed. P.L. 90–235, § 6(a)(7), Jan. 2, 1968, 81 Stat. 762]

[§ 3636. Repealed. P.L. 87–649, § 14c(8), Sept. 7, 1962, 76 Stat. 501]

[§ 3637. Repealed. P.L. 90–235, § 7(b)(1), Jan. 2, 1968, 81 Stat. 763]

[§ 3638. Repealed. P.L. 85–861, § 36B(8), Sept. 2, 1958, 72 Stat. 1570]

§ 3639. Enlisted members: officers not to use as servants

No officer of the Army may use an enlisted member of the Army as a servant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 208.)

[CHAPTER 351—REPEALED]

[§§ 3661 to 3663. Repealed. P.L. 90–377, § 6(1), July 5, 1968, 82 Stat. 288]

CHAPTER 353—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.
3681. Presentation of United States flag upon retirement.
[3682 to 3683. Repealed.]
3684. Service credit: regular enlisted members; service as an officer to be counted as enlisted service.
[3685 to 3690. Repealed.]
3691. Flying officer rating: qualifications.
[3692, 3693. Repealed.]

§ 3681. Presentation of United States flag upon retirement

(a) PRESENTATION OF FLAG.—Upon the release of a member of the Army from active duty for retirement, the Secretary of the Army shall present a United States flag to the member.

(b) MULTIPLE PRESENTATIONS NOT AUTHORIZED.—A member is not eligible for a presentation of a flag under subsection (a) if the member has previously been presented a flag under this section or any other provision of law providing for the presentation of a United States flag incident to release from active service for retirement.

(c) NO COST TO RECIPIENT.—The presentation of a flag under this section shall be at no cost to the recipient.

(Added P.L. 105–261, § 644(a)(1), Oct. 17, 1998, 112 Stat. 2048; amended P.L. 106–65, § 652(e), Oct. 5, 1999, 113 Stat. 666.)

[§ 3682. Repealed. P.L. 90–235, § 6(a)(2), Jan. 2, 1968, 81 Stat. 761]

[§ 3683. Repealed. P.L. 99–145, § 1301(b)(1)(A), Nov. 8, 1985, 99 Stat. 735]

§ 3684. Service credit: regular enlisted members; service as an officer to be counted as enlisted service

An enlisted member of the Regular Army is entitled to count active service as an officer in the Army as enlisted service for all purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 211.)

[§ 3685. Repealed. P.L. 90–235, § 7(a)(3), Jan. 2, 1968, 81 Stat. 763]

[§ 3686. Repealed. P.L. 103–337, § 1662(g)(2), Oct. 5, 1994, 108 Stat. 2996.]

[§ 3687. Repealed. P.L. 99–661, § 604(f)(1)(A), Nov. 14, 1986, 100 Stat. 3877]

[§ 3688. Repealed. P.L. 85–861, § 36B(10), Sept. 2, 1958, 72 Stat. 1570]

[§ 3689. Repealed. P.L. 87–649, § 14c(9), Sept. 7, 1962, 76 Stat. 501]

[§ 3690. Repealed. P.L. 90–235, § 7(b)(1), Jan. 2, 1968, 81 Stat. 763]

§ 3691. Flying officer rating: qualifications

Only officers of the Army in the following categories may be rated as flying officers:

(1) Officers who have aeronautical ratings as pilots of service types of aircraft or as aircraft observers.

(2) Flight surgeons.

(3) Officers undergoing flight training.

(4) Officers who are members of combat crews, other than pilots of service types of aircraft, aircraft observers, and observers.

(5) In time of war, officers who have aeronautical ratings as observers.

(Aug. 10, 1956, ch. 1041, 70A Stat. 213.)

[§ 3692. Repealed. P.L. 92–168, § 1(1), Nov. 24, 1971, 85 Stat. 489]

[§ 3693. Repealed. P.L. 90–235, § 7(a)(3), Jan. 2, 1968, 81 Stat. 763]

CHAPTER 355—HOSPITALIZATION

Sec.
[3721, 3722. Repealed]
3723. When Secretary may require.

[§§ 3721, 3722. Repealed. P.L. 99–661, § 604(f)(1)(A), Nov. 14, 1986, 100 Stat. 3877]

§ 3723. When Secretary may require

The Secretary of the Army may order the hospitalization, medical and surgical treatment, and domiciliary care, for as long as necessary, of any member of the Army on active duty, and may incur obligations with respect thereto, whether or not the member incurred an injury, illness, or disease in line of duty, except in the case of a member treated in a private hospital, or by a civilian physician, while on leave of absence for more than 24 hours.

(Aug. 10, 1956, ch. 1041, 70A Stat. 215; Nov. 14, 1986, P.L. 99–661, § 604(f)(1)(D), 100 Stat. 3878; Dec. 4, 1987, P.L. 100–180, § 1231(16), 101 Stat. 1161.)

CHAPTER 357—DECORATIONS AND AWARDS

Sec.
3741. Medal of honor: award.
3742. Distinguished-service cross: award.
3743. Distinguished-service medal: award.
3744. Medal of honor; distinguished-service cross; distinguished-service medal: limitations on award.
3745. Medal of honor; distinguished-service cross; distinguished-service medal: delegation of power to award.
3746. Silver star: award.
3747. Medal of honor; distinguished-service cross; distinguished-service medal: silver star: replacement.
3748. Medal of honor; distinguished-service cross; distinguished-service medal; silver star: availability of appropriations.
3749. Distinguished flying cross: award; limitations.
3750. Soldier's Medal: award; limitations.
3751. Service medals: issue; replacement; availability of appropriations.
3752. Medals: posthumous award and presentation.
3753. Civil War battle streamers.

§ 3741. Medal of honor: award

The President may award, and present in the name of Congress, a medal of honor of appropriate design, with ribbons and appurtenances, to a person who while a member of the Army, distinguished himself conspicuously by gallantry and intrepidity at the risk of his life above and beyond the call of duty—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 215; July 25, 1963, P.L. 88–77, § 1(1), 77 Stat. 93.)

§ 3742. Distinguished-service cross: award

The President may award a distinguished-service cross of appropriate design, with ribbons and appurtenances, to a person who, while serving in any capacity with the Army, distinguishes himself by extraordinary heroism not justifying the award of a medal of honor—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 215; July 25, 1963, P.L. 88–77, § 1(2), 77 Stat. 93.)

§ 3743. Distinguished-service medal: award

The President may award a distinguished-service medal of appropriate design and a ribbon, together with a rosette or other device to be worn in place thereof, to a person who, while serving in any capacity with the Army, distinguishes himself by exceptionally meritorious service to the United States in a duty of great responsibility.

(Aug. 10, 1956, ch. 1041, 70A Stat. 216.)

§ 3744. Medal of honor; distinguished-service cross; distinguished-service medal: limitations on award

(a) No more than one medal of honor, distinguished-service cross, or distinguished-service medal may be awarded to a person. However, for each succeeding act that would otherwise justify the award of such a medal or cross, the President may award a suitable bar or other device to be worn as he directs.

(b) Except as provided in subsection (d), no medal of honor, distinguished-service cross, distinguished-service medal, or device in place thereof, may be awarded to a person unless—

(1) the award is made within three years after the date of the act justifying the award;

(2) a statement setting forth the distinguished service and recommending official recognition of it was made within two years after the distinguished service; and

(3) it appears from records of the Department of the Army that the person is entitled to the award.

(c) No medal of honor, distinguished-service cross, distinguished-service medal, or device in place thereof, may be awarded or presented to a person whose service after he distinguished himself has not been honorable.

(d) If the Secretary of the Army determines that—

(1) a statement setting forth the distinguished service and recommending official recognition of it was made and supported by sufficient evidence within two years after the distinguished service; and

(2) no award was made, because the statement was lost or through inadvertence the recommendation was not acted on;

a medal of honor, distinguished-service cross, distinguished-service medal, or device in place thereof, as the case may be, may be awarded to the person concerned within two years after the date of that determination.

(Aug. 10, 1956, ch. 1041, 70A Stat. 216; July 5, 1960, P.L. 86–582, § 1(1), 74 Stat. 320.)

§ 3745. Medal of honor; distinguished-service cross; distinguished-service medal: delegation of power to award

The President may delegate his authority to award the medal of honor, distinguished-service cross, and distinguished-service medal, to a commanding general of a separate army or higher unit in the field.

(Aug. 10, 1956, ch. 1041, 70A Stat. 216.)

§ 3746. Silver star: award

The President may award a silver star of appropriate design, with ribbons and appurtenances, to a person who, while serving in any capacity with the Army, is cited for gallantry in action that does not warrant a medal of honor or distinguished-service cross—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 216; July 25, 1963, P.L. 88–77, § 1(3), 77 Stat. 93.)

§ 3747. Medal of honor; distinguished-service cross; distinguished-service medal; silver star: replacement

Any medal of honor, distinguished-service cross, distinguished-service medal, or silver star, or any bar, ribbon, rosette, or other device issued for wear with or in place of any of them, that is lost or destroyed, or becomes unfit for use, without fault or neglect of the person to whom it was awarded, shall be replaced without charge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 216.)

§ 3748. Medal of honor; distinguished-service cross; distinguished-service medal; silver star: availability of appropriations

The Secretary of the Army may spend, from any appropriation for contingent expenses of the Department of the Army, amounts necessary to provide medals and devices under sections 3741, 3742, 3743, 3744, 3746, 3747, and 3752 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 217.)

§ 3749. Distinguished flying cross: award; limitations

(a) The President may award a distinguished flying cross of appropriate design with accompanying ribbon to any person who, while serving in any capacity with the Army, distinguishes himself by heroism or extraordinary achievement while participating in an aerial flight.

(b) Not more than one distinguished flying cross may be awarded to a person. However, for each succeeding act that would otherwise justify the award of such a cross, the President may award a suitable bar or other device to be worn as he directs.

(c) No distinguished flying cross, or device in place thereof, may be awarded or presented to a person whose service after he distinguished himself has not been honorable.

(Aug. 10, 1956, ch. 1041, 70A Stat. 217.)

§ 3750. Soldier's Medal: award; limitations

(a)(1) The President may award a decoration called the "Soldier's Medal", of appropriate design with accompanying ribbon, to any person who, while serving in any capacity with the Army, dis-

tinguishes himself by heroism not involving actual conflict with an enemy.

(2) The authority in paragraph (1) includes authority to award the medal to a member of the Ready Reserve who was not in a duty status defined in section 101(d) of this title when the member distinguished himself by heroism.

(b) Not more than one Soldier's Medal may be awarded to a person. However, for each succeeding act that would otherwise justify the award of such a medal, the President may award a suitable bar or other device to be worn as he directs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 217; amended P.L. 105–85, § 574(a), Nov. 18, 1997, 111 Stat. 1758.)

§ 3751. Service medals: issue; replacement; availability of appropriations

(a) The Secretary of the Army shall procure, and issue without charge to any person entitled thereto, any service medal authorized for members of the Army after May 12, 1928, and any ribbon, clasp, star, or similar device prescribed as a part of that medal.

(b) Under such regulations as the Secretary may prescribe, any medal or other device issued under subsection (a) that is lost, destroyed, or becomes unfit for use, without fault or neglect of the owner, may be replaced at cost. However, if the owner is a member of the Army or the Air Force, the medal or device may be replaced without charge.

(c) The Secretary may spend, from any appropriation for the support of the Army, amounts necessary to provide medals and devices under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 217.)

§ 3752. Medals: posthumous award and presentation

(a) If a person dies before the award of a medal of honor, distinguished-service cross, distinguished-service medal, distinguished flying cross, or device in place thereof, to which he is entitled, the award may be made and the medal or device presented to his representative, as designated by the President.

(b) If a person dies before an authorized service medal or device prescribed as a part thereof is presented to him under section 3751 of this title, it shall be presented to his family.

(Aug. 10, 1956, ch. 1041, 70A Stat. 217; Sept. 2, 1958, P.L. 85–861, § 33(a)(23), 72 Stat. 1565.)

§ 3753. Civil War battle streamers

If, under regulations prescribed by the Secretary of the Army, it is determined that a regiment or other unit of the Army is entitled to that honor, the regiment or unit may carry any appropriate Civil War battle streamer with its colors or standards.

(Aug. 10, 1956, ch. 1041, 70A Stat. 218.)

[CHAPTER 359—REPEALED]

[§§ 3781 to 3787. Repealed. P.L. 96–513, § 213, Dec. 12, 1980, 94 Stat. 2885]

[CHAPTER 360—REPEALED]

[§§ 3791 to 3797. Repealed. P.L. 96–513, § 213, Dec. 12, 1980, 94 Stat. 2885]

[CHAPTER 361—SEPARATION FOR VARIOUS REASONS—REPEALED]

[§§ 3811 to 3813. Repealed. P.L. 90–235, § 3(a)(2), (b)(1), Jan. 2, 1968, 81 Stat. 757, 758]

[§ 3814. Repealed. P.L. 96–513, § 214, Dec. 12, 1980, 94 Stat. 2885]

[§ 3814a. Omitted]

[§§ 3815, 3816. Repealed. P.L. 90–235, § 3(a)(2), (b)(1), Jan. 2, 1968, 81 Stat. 757, 758]

[§ 3818. Repealed. P.L. 96–513, § 236, Dec. 12, 1980, 94 Stat. 2887]

[§§ 3819, 3820. Repealed. P.L. 103–337, § 1629(a), Oct. 5, 1994, 108 Stat. 2963]

[CHAPTER 363—SEPARATION OR TRANSFER TO RETIRED RESERVE—REPEALED]

[§§ 3841, 3842. Repealed. P.L. 86–559, § 1(22), June 30, 1960, 74 Stat. 271]

[§§ 3843 to 3846. Repealed effective Oct. 1, 1996. P.L. 103–337, § 1629(a), Oct. 5, 1994, 108 Stat. 2963]

[§ 3847. Repealed. P.L. 90–130, § 1(12)(A), Nov. 8, 1967, 81 Stat. 376]

[§ 3848. Repealed effective Oct. 1, 1996. P.L. 103–337, § 1629(a), Oct. 5, 1994, 108 Stat. 2963]

[§ 3849. Repealed. P.L. 86–559, § 1(27), June 30, 1960, 74 Stat. 272]

[§§ 3850 to 3855. Repealed effective Oct. 1, 1996. P.L. 103–337, § 1629(a), Oct. 5, 1994, 108 Stat. 2963]

[CHAPTER 365—REPEALED]

[§§ 3881, 3882. Repealed. P.L. 85–155, § 401(1), Aug. 21, 1957, 71 Stat. 390]

[§§ 3883 to 3886. Repealed. P.L. 96–513, § 216, Dec. 12, 1980, 94 Stat. 2886]

[§ 3887. Repealed. P.L. 85–155, § 401(1), Aug. 21, 1957, 71 Stat. 390]

[§§ 3888, 3889. Repealed. P.L. 96–513, § 216, Dec. 12, 1980, 94 Stat. 2886]

CHAPTER 367—RETIREMENT FOR LENGTH OF SERVICE

Sec.
3911. Twenty years or more: regular or reserve commissioned officers.
[3912, 3913. Repealed.]
3914. Twenty to thirty years: enlisted members.
[3915, 3916. Repealed.]
3917. Thirty years or more: regular enlisted members.
3918. Thirty years or more: regular commissioned officers.
[3919. Repealed.]
3920. More than thirty years: permanent professors and the Director of Admissions of the United States Military Academy.
3921. Mandatory retirement: Superintendent of the United States Military Academy.
[3922 to 3923. Repealed.]
3924. Forty years or more: Army officers.
3925. Computation of years of service: voluntary retirement; enlisted members.
3926. Computation of years of service: voluntary retirement; regular and reserve commissioned officers.
[3927, 3928. Repealed.]
3929. Computation of retired pay: law applicable.

§ 3911. Twenty years or more: regular or reserve commissioned officers

(a) The Secretary of the Army may, upon the officer's request, retire a regular or reserve commissioned officer of the Army who has at least 20 years of service computed under section 3926 of this title, at least 10 years of which have been active service as a commissioned officer.[1]

(b) The Secretary of Defense may authorize the Secretary of the Army, during the period beginning on October 1, 1990, and ending on December 31, 2001, to reduce the requirement under subsection (a) for at least 10 years of active service as a commissioned officer to a period (determined by the Secretary of the Army) of not less than eight years.

(Aug. 10, 1956, ch. 1041, 70A Stat. 224; Nov. 5, 1990, P.L. 101–510, § 523(a), 104 Stat. 1562; Nov. 30, 1993, P.L. 103–160, § 561(c), 107 Stat. 1667; P.L. 105–261, § 561(e), Oct. 17, 1998, 112 Stat. 2025; P.L. 106–398, § 1[571(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A–134.)

[§ 3912. Repealed. P.L. 85–155, § 401(1), Aug. 21, 1957, 71 Stat. 390]

[§ 3913. Repealed. P.L. 96–513, § 217(a), Dec. 12, 1980, 94 Stat. 2886]

§ 3914. Twenty to thirty years: enlisted members

Under regulations to be prescribed by the Secretary of the Army, an enlisted member of the Army who has at least 20, but

[1] For a provision providing the Secretary of Defense with a temporary early retirement authority (TERA) by authorizing, through December 31, 2001, the retirement of selected regular or reserved commissioned officers with at least 15, but less than 20 years of service, see section 4403 of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 102–484), as amended, set out at the end of chapter 65 (ending with section 1315).

less than 30, years of service computed under section 3925 of this title may, upon his request, be retired.[2]

(Aug. 10, 1956, ch. 1041, 70A Stat. 225; Sept. 2, 1958, P.L. 85–861, § 33(a)(25), 72 Stat. 1565; Sept. 8, 1980, P.L. 96–343, § 9(a)(1), 94 Stat. 1128; Oct. 5, 1994, P.L. 103–337, § 515(a), 108 Stat. 2753.)

[§ 3915. Repealed. P.L. 90–130, § 1(13), Nov. 8, 1967, 81 Stat. 376]

[§ 3916. Repealed. P.L. 96–513, § 217(a), Dec. 12, 1980, 94 Stat. 2886]

§ 3917. Thirty years or more: regular enlisted members

A regular enlisted member of the Army who has at least 30 years of service computed under section 3925 of this title shall be retired upon his request.

(Aug. 10, 1956, ch. 1041, 70A Stat. 226.)

§ 3918. Thirty years or more: regular commissioned officers

A regular commissioned officer of the Army who has at least 30 years of service computed under section 3926 of this title may be retired upon his request, in the discretion of the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 226.)

[§ 3919. Repealed. P.L. 96–513, § 217(a), Dec. 12, 1980, 94 Stat. 2886]

§ 3920. More than thirty years: permanent professors and the Director of Admissions of the United States Military Academy

(a) The Secretary of the Army may retire an officer specified in subsection (b) who has more than 30 years of service as a commissioned officer.

(b) Subsection (a) applies in the case of the following officers:

(1) Any permanent professor of the United States Military Academy.

(2) The Director of Admissions of the United States Military Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 226; amended in its entirety P.L. 104–106, § 509(a)(1), Feb. 10, 1996, 110 Stat. 298.)

§ 3921. Mandatory retirement: Superintendent of the United States Military Academy

Upon the termination of the detail of an officer to the position of Superintendent of the United States Military Academy, the Secretary of the Army shall retire the officer under any provision of this chapter under which that officer is eligible to retire.

(Added P.L. 106–65, § 532(a)(1)(A), Oct. 5, 1999, 113 Stat. 602.)

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[2] For a provision providing the Secretary of Defense with a temporary early retirement authority (TERA) by authorizing, through December 31, 2001, the retirement of selected enlisted members with at least 15, but less than 20 years of service, see section 4403 of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 102–484), as amended, set out at the end of chapter 65 (ending with section 1315).

[§§ 3921 to 3923. Repealed. P.L. 96–513, title II, § 217(a), Dec. 12, 1980, 94 Stat. 2886]

§ 3924. Forty years or more: Army officers

(a) Except as provided in section 1186 of this title, a commissioned officer of the Army who has at least 40 years of service computed under section 3926 of this title shall be retired upon his request.

(b) Any warrant officer of the Army who has at least 40 years of service computed under section 3926(a) of this title shall be retired upon his request.

(Aug. 10, 1956, ch. 1041, 70 Stat. 227; Dec. 12, 1980, P.L. 96–513, § 502(17), 94 Stat. 2910.)

§ 3925. Computation of years of service: voluntary retirement; enlisted members

(a) For the purpose of determining whether an enlisted member of the Army may be retired under section 3914 or 3917 of this title, his years of service are computed by adding all active service in the armed forces and service computed under section 3683 of this title.

(b) Time required to be made up under section 972(a) of this title may not be counted in determining years of service under subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 228; Sept. 2, 1958, P.L. 85–861, § 1(97), 72 Stat. 1488; Sept. 8, 1980, P.L. 96–343, § 9(a)(2), 94 Stat. 1128; July 1, 1986, P.L. 99–348, § 202(c), 100 Stat. 695; Oct. 5, 1994, P.L. 103–337, § 635(a)(1), 108 Stat. 2788; Feb. 10, 1996, P.L. 104–106, § 561(d)(2)(A), 110 Stat. 322.)

§ 3926. Computation of years of service: voluntary retirement; regular and reserve commissioned officers

(a) For the purpose of determining whether an officer of the Army may be retired under section 3911, 3918, or 3924 of this title, his years of service are computed by adding—

(1) all active service performed as a member of the Army or the Air Force;

(2) all service in the Navy or Marine Corps that may be included in determining the eligibility of an officer of the Navy or Marine Corps for retirement;

(3) all service computed under section 3683 of this title; and

(4) if an officer of the Regular Army, all active service performed as an officer of the Philippine Constabulary.

(b) For the purpose of determining whether a commissioned officer of the Regular Army in the Medical Corps may be retired under section 3911, 3918, or 3924 of this title, his years of service are computed by adding to his service under subsection (a) all service performed as a contract surgeon, acting assistant surgeon, or contract physician, under a contract to serve full time and to take and change station as ordered.

(c) For the purpose of determining whether a commissioned officer of the Regular Army in the Dental Corps may be retired under section 3911, 3918, or 3924 of this title, his years of service are computed by adding to his service under subsection (a) all service as a contract dental surgeon or acting dental surgeon.

(d) For the purpose of determining whether a commissioned officer of the Army Nurse Corps or the Army Medical Specialist Corps may be retired under section 3911 of this title, all service computed under section 3683 of this title shall be treated as if it were service as a commissioned officer.

(e) Section 972(b) of this title excludes from computation of an officer's years of service for purposes of this section any time identified with respect to that officer under that section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 228; Aug. 25, 1959, P.L. 86–197, § 1(5), 73 Stat. 426; Feb. 10, 1996, P.L. 104–106, § 561(d)(2)(B), 110 Stat. 322.)

[§ 3927. Repealed. P.L. 96–513, § 217(a), Dec. 12, 1980, 94 Stat. 2886]

[§ 3928. Repealed. P.L. 85–155, § 401(1), Aug. 21, 1957, 71 Stat. 390]

§ 3929. Computation of retired pay: law applicable

A member of the Army retired under this chapter is entitled to retired pay computed under chapter 371 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 230.)

CHAPTER 369—RETIRED GRADE

Sec.
3961. General rule.
3962. Higher grade for service in special positions.
3963. Highest grade held satisfactorily: Reserve enlisted members reduced in grade not as a result of the member's misconduct.
3964. Higher grade after 30 years of service: warrant officers and enlisted members.
3965. Restoration to former grade: retired warrant officers and enlisted members.
3966. Retired lists.

§ 3961. General rule

(a) The retired grade of a regular commissioned officer of the Army who retires other than for physical disability, and the retired grade of a reserve commissioned officer of the Army who retires other than for physical disability, is determined under section 1370 of this title.

(b) Unless entitled to a higher retired grade under some other provision of law, a Regular or Reserve of the Army not covered by subsection (a) who retires other than for physical disability retires in the regular or reserve grade that he holds on the date of his retirement.

(Aug. 10, 1956, ch. 1041, 70A Stat. 230; Dec. 12, 1980, P.L. 96–513, § 502(18), 94 Stat. 2910; Oct. 5, 1994, P.L. 103–337, § 1672(c)(2), 108 Stat. 3015; P.L. 106–398, § 1[506(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–102.)

§ 3962. Higher grade for service in special positions

Upon retirement, any permanent professor of the United States Military Academy whose grade is below brigadier general, and whose service as such a professor has been long and distinguished, may, in the discretion of the President, be retired in the grade of brigadier general.

(Aug. 10, 1956, ch. 1041, 70A Stat. 230; Sept. 2, 1958, P.L. 85–861, § 1(99), 72 Stat. 1489; Oct. 22, 1965, P.L. 89–288, § 2, 79 Stat. 1050; Sept. 8, 1980, P.L. 96–343, § 13(a)(1)–(3), 94 Stat. 1131; Dec. 12, 1980, P.L. 96–513, § 502(19), 94 Stat. 2910; July 10, 1981, P.L. 97–22, § 10(a)(2)(B), 95 Stat. 136; Feb. 10, 1996, P.L. 104–106, § 502(c)–(d)(1), 110 Stat. 293.)

§ 3963. Highest grade held satisfactorily: Reserve enlisted members reduced in grade not as a result of the member's misconduct

(a) A Reserve enlisted member of the Army described in subsection (b) who is retired under section 3914 of this title shall be retired in the highest enlisted grade in which the member served on active duty satisfactorily (or, in the case of a member of the National Guard, in which the member served on full-time National Guard duty satisfactorily), as determined by the Secretary of the Army.

(b) This section applies to a Reserve enlisted member who—

(1) at the time of retirement is serving on active duty (or, in the case of a member of the National Guard, on full-time National Guard duty) in a grade lower than the highest enlisted grade held by the member while on active duty (or full-time National Guard duty); and

(2) was previously administratively reduced in grade not as a result of the member's own misconduct, as determined by the Secretary of the Army.

(c) This section applies with respect to Reserve enlisted members who are retired under section 3914 of this title after September 30, 1996.

(Added P.L. 104–201, § 532(a)(1), Sept. 23, 1996, 110 Stat. 2518.)

§ 3964. Higher grade after 30 years of service: warrant officers and enlisted members

(a) Each retired member of the Army covered by subsection (b) who is retired with less than 30 years of active service is entitled, when his active service plus his service on the retired list totals 30 years, to be advanced on the retired list to the highest grade in which he served on active duty satisfactorily (or, in the case of a member of the National Guard, in which he served on full-time duty satisfactorily), as determined by the Secretary of the Army.

(b) This section applies to—

(1) warrant officers of the Army;

(2) enlisted members of the Regular Army; and

(3) reserve enlisted members of the Army who, at the time of retirement, are serving on active duty (or, in the case of members of the National Guard, on full-time National Guard duty).

(Aug. 10, 1956, ch. 1041, 70A Stat. 231; Sept. 2, 1958, P.L. 85–861, § 1(100), Oct. 19, 1984, 72 Stat. 1489; P.L. 98–525, § 533(c), 98 Stat. 2528; revised in its entirety P.L. 100–180, § 512(a), Dec. 4, 1987, 101 Stat. 1089.)

§ 3965. Restoration to former grade: retired warrant officers and enlisted members

Each retired warrant officer or enlisted member of the Army who has been advanced on the retired list to a higher commissioned grade under section 3964 of this title, and who applies to the Secretary of the Army within three months after his advancement, shall, if the Secretary approves, be restored on the retired list to his former warrant officer or enlisted status, as the case may be.

(Aug. 10, 1956, ch. 1041, 70A Stat. 231; Dec. 4, 1987, P.L. 100–180, § 512(d)(1), 101 Stat. 1090.)

§ 3966. Retired lists

(a) The Secretary of the Army shall maintain a retired list containing the name of each retired commissioned officer of the Regular Army.

(b) The Secretary shall maintain a retired list containing the name of—

(1) each person entitled to retired pay under any law providing retired pay for commissioned officers of the Army, other than of the Regular Army; and

(2) each retired warrant officer or enlisted member of the Army who is advanced to a commissioned grade.

(c) The Secretary shall maintain a retired list containing the name of each retired warrant officer of the Army.

(d) The Secretary shall maintain a retired list containing the name of each retired enlisted member of the Regular Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 231; Sept. 2, 1958, P.L. 85–861, § 1(101), 72 Stat. 1489; Dec. 4, 1987, P.L. 100–180, § 512(d)(1), 101 Stat. 1090.)

CHAPTER 371—COMPUTATION OF RETIRED PAY

Sec.
3991. Computation of retired pay.
3992. Recomputation of retired pay to reflect advancement on retired list.

§ 3991. Computation of retired pay

(a) COMPUTATION.—

(1) FORMULA.—The monthly retired pay of a member entitled to such pay under this subtitle is computed by multiplying—

(A) the member's retired pay base (as computed under section 1406(c) or 1407 of this title), by

(B) the retired pay multiplier prescribed in section 1409 of this title for the number of years credited to the member under section 1405 of this title.

(2) ADDITIONAL 10 PERCENT FOR CERTAIN ENLISTED MEMBERS CREDITED WITH EXTRAORDINARY HEROISM.—If a member who is retired under section 3914 of this title has been credited by the Secretary of the Army with extraordinary heroism in the line of duty, the member's retired pay shall be increased by 10 percent of the amount determined under paragraph (1) (but to not more than 75 percent of the retired pay base upon which the computation of such retired pay is based). The Secretary's determination as to extraordinary heroism is conclusive for all purposes.

(b) GENERAL RULES.—

(1) USE OF MOST FAVORABLE FORMULA.—If a person would otherwise be entitled to retired pay computed under more than one formula in subsection (a) or the table in section 1401 of this title, he is entitled to be paid under the applicable formula that is most favorable to him.

(2) ROUNDING TO NEXT LOWER DOLLAR.—The amount computed under subsection (a), if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(c) SPECIAL RULE FOR RETIRED RESERVE ENLISTED MEMBERS COVERED BY SECTION 3963.—In the case of a Reserve enlisted member retired under section 3914 of this title whose retired grade is determined under section 3963 of this title and who first became a member of a uniformed service before September 8, 1980, the retired pay base of the member (notwithstanding section 1406(a)(1) of this title) is the amount of the monthly basic pay of the member's retired grade (determined based upon the rates of basic pay applicable on the date of the member's retirement), and that amount shall be used for the purposes of subsection (a)(1)(A) rather than the amount computed under section 1406(c) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 232; [amended numerous times,] revised in its entirety P.L. 99–348, § 202(a), July 1, 1986, 100 Stat. 694; amended P.L. 103–337, § 635(a)(2), Oct. 5, 1994, 108 Stat. 2788; P.L. 104–201, § 532(d)(1), Sept. 23, 1996, 110 Stat. 2520.)

§ 3992. Recomputation of retired pay to reflect advancement on retired list

(a) ENTITLEMENT TO RECOMPUTATION.—An enlisted member or warrant officer of the Army who is advanced on the retired list under section 3964 of this title is entitled to recompute his retired pay in accordance with this section.

(b) FORMULA.—The monthly retired pay of a member entitled to recompute that pay under this section is computed by multiplying—

(1) the member's retired pay base (as computed under section 1406(c) or 1407 of this title), by

(2) the retired pay multiplier prescribed in section 1409 of this title for the number of years credited to the member under section 1405 of this title.

(c) ROUNDING TO NEXT LOWER DOLLAR.—The amount computed under subsection (b), if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(Aug. 10, 1956, ch. 1041, 70A Stat. 233; Sept. 8, 1980, P.L. 96–342, § 813(c), 94 Stat. 1104; Dec. 12, 1980, P.L. 96–513, § 512(10), 94 Stat. 2929; Oct. 12, 1982, P.L. 97–295, § 1(40), 96 Stat. 1297; Sept. 24, 1983, P.L. 98–94, §§ 922, 923, 97 Stat. 641, 643; July 1, 1986, P.L. 99–348, § 202(b), 100 Stat. 695; Oct. 5, 1994, P.L. 103–337, § 635(a)(3), 108 Stat. 2788.)

CHAPTER 373—CIVILIAN EMPLOYEES

Sec.
4021. Army War College and United States Army Command and General Staff College: civilian faculty members.
[4022. Repealed.]
[4023. Repealed.]
4024. Expert accountant for Inspector General.
4025. Production of supplies and munitions: hours and pay of laborers and mechanics.
4027. Civilian special agents of the Criminal Investigation Command: authority to execute warrants and make arrests.

§ 4021. Army War College and United States Army Command and General Staff College: civilian faculty members

(a) AUTHORITY OF SECRETARY.—The Secretary of the Army may employ as many civilians as professors, instructors, and lecturers at the Army War College or the United States Army Command and General Staff College as the Secretary considers necessary.

(b) COMPENSATION OF FACULTY MEMBERS.—The compensation of persons employed under this section shall be as prescribed by the Secretary.

(c) APPLICATION TO CERTAIN FACULTY MEMBERS.—(1) Except as provided in paragraph (2), this section shall apply with respect to persons who are selected by the Secretary for employment as professors, instructors, and lecturers at the Army War College or the United States Army Command and General Staff College after the end of the 90-day period beginning on the date of the enactment of this section.

(2) This section shall not apply with respect to professors, instructors, and lecturers employed at the Army War College or the United States Army Command and General Staff College if the duration of the principal course of instruction offered at the college involved is less than 10 months.

(Added P.L. 101–189, § 1124(b)(1), Nov. 29, 1989, 103 Stat. 1558.)

[§ 4022. Repealed. P.L. 98–94, § 932(b)(1), Sept. 24, 1983, 97 Stat. 650]

[§ 4023. Repealed. P.L. 87–651, § 116(1), Sept. 7, 1962, 76 Stat. 513]

§ 4024. Expert accountant for Inspector General

The Secretary of the Army shall appoint an expert accountant to perform duties under the Inspector General.

(Aug. 10, 1956, ch. 1041, 70A Stat. 234.)

§ 4025. Production of supplies and munitions: hours and pay of laborers and mechanics

During a national emergency declared by the President, the regular working hours of laborers and mechanics of the Department of the Army producing military supplies or munitions are 8 hours a day or 40 hours a week. However, under regulations prescribed by the Secretary of the Army these hours may be exceeded. Each laborer or mechanic who works more than 40 hours in a workweek shall be paid at a rate not less than one and one-half times the regular hourly rate for each hour in excess of 40.

(Aug. 10, 1956, ch. 1014, 70A Stat. 234.)

§ 4027. Civilian special agents of the Criminal Investigation Command: authority to execute warrants and make arrests

(a) AUTHORITY.—The Secretary of the Army may authorize any Department of the Army civilian employee described in subsection (b) to have the same authority to execute and serve warrants and other processes issued under the authority of the United States and to make arrests without a warrant as may be authorized under section 1585a of this title for special agents of the Defense Criminal Investigative Service.

(b) AGENTS TO HAVE AUTHORITY.—Subsection (a) applies to any employee of the Department of the Army who is a special agent of the Army Criminal Investigation Command (or a successor to that command) whose duties include conducting, supervising, or coordinating investigations of criminal activity in programs and operations of the Department of the Army.

(c) GUIDELINES FOR EXERCISE OF AUTHORITY.—The authority provided under subsection (a) shall be exercised in accordance with guidelines prescribed by the Secretary of the Army and approved by the Secretary of Defense and the Attorney General and any other applicable guidelines prescribed by the Secretary of the Army, the Secretary of Defense, or the Attorney General.

(Added P.L. 106–398, § 1[554(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–126.)

PART III—TRAINING

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CHAPTER 401—TRAINING GENERALLY

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4302. Enlisted members of Army: schools.
4303. Army Ranger training: instructor staffing; safety.
4306. Service schools: leaves of absence for instructors.
[4307, 4308. Repealed.]
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[4310, 4311, 4312, 4313. Repealed.]
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4321. United States Army War College: master of strategic studies degree.

§ 4301. Members of Army: detail as students, observers, and investigators at educational institutions, industrial plants, and hospitals

(a) The Secretary of the Army may detail members of the Army as students at such technical, professional, and other civilian educational institutions, or as students, observers, or investigators at such industrial plants, hospitals, and other places, as are best suited to enable them to acquire knowledge or experience in the specialties in which it is considered necessary that they perfect themselves.

(b) An officer, other than one of the Regular Army on the active-duty list, who is detailed under subsection (a) shall be ordered to additional active duty immediately upon termination of the detail, for a period at least as long as the detail. However, if the detail is for 90 days or less, the officer may be ordered to that additional duty only with his consent and in the discretion of the Secretary.

(c) No Reserve of the Army may be detailed as a student, observer, or investigator, or ordered to active duty under this section, without his consent and, if a member of the Army National Guard of the United States, without the approval of the governor or other appropriate authority of the State or Territory, Puerto Rico, or the District of Columbia of whose Army National Guard he is a member.

(d) The Secretary may require, as a condition of a detail under subsection (a), that an enlisted member accept a discharge and be reenlisted in his component for at least three years.

(e) The total length of details of an enlisted member of the Army under subsection (a) during one enlistment may not exceed 50 percent of that enlistment.

(f) At no time may more than 8 percent of the authorized strength in commissioned officers, 8 percent of the authorized strength in warrant officers, or 2 percent of the authorized strength in enlisted members, of the Regular Army, or more than 8 percent of the actual strength in commissioned officers, 8 percent of the actual strength in warrant officers, or 2 percent of the actual strength in enlisted members, of the total of reserve components of the Army, be detailed as students under subsection (a). For the purposes of this subsection, the actual strength of each category of Reserves includes both members on active duty and those not on active duty.

(g) Expenses incident to the detail of members under this section shall be paid from any funds appropriated for the Department of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 234; Nov. 29, 1973, P.L. 93–169, 87 Stat. 689; Dec. 12, 1980, P.L. 96–513, § 502(23), 94 Stat. 2910; Sept. 29, 1988, P.L. 100–456, § 1234(a), 102 Stat. 2059.)

§ 4302. Enlisted members of Army: schools

(a) So far as consistent with the requirements of military training and service, and under regulations to be prescribed by the Secretary of the Army with the approval of the President, enlisted members of the Army shall be permitted to study and receive instruction to increase their military efficiency and to enable them to return to civilian life better equipped for industrial, commercial, and business occupations. Part of this instruction may be vocational education in agriculture or the mechanic arts. Civilian teachers may be employed to aid Army officers in this instruction.

(b) Schools for the instruction of enlisted members of the Army in the common branches of education, including United States history shall be maintained at all posts at which members of the Army are stationed. The Secretary may detail members of the Army to carry out this subsection. The commander of each post where schools are maintained under this subsection shall provide a suitable room or building for school and religious purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 235.)

§ 4303. Army Ranger training: instructor staffing; safety

(a) LEVELS OF PERSONNEL ASSIGNED.—(1) The Secretary of the Army shall ensure that at all times the number of officers, and the number of enlisted members, permanently assigned to the Ranger Training Brigade (or other organizational element of the Army primarily responsible for Ranger student training) are not less than 90 percent of the required manning spaces for officers, and for enlisted members, respectively, for that brigade.

(2) In this subsection, the term "required manning spaces" means the number of personnel spaces for officers, and the number of personnel spaces for enlisted members, that are designated in Army authorization documents as the number required to accomplish the missions of a particular unit or organization.

(b) TRAINING SAFETY CELLS.—(1) The Secretary of the Army shall establish and maintain an organizational entity known as a "safety cell" as part of the organizational elements of the Army responsible for conducting each of the three major phases of the Ranger Course. The safety cell in each different geographic area of

Ranger Course training shall be comprised of personnel who have sufficient continuity and experience in that geographic area of such training to be knowledgeable of the local conditions year-round, including conditions of terrain, weather, water, and climate and other conditions and the potential effect on those conditions on Ranger student training and safety.

(2) Members of each safety cell shall be assigned in sufficient numbers to serve as advisers to the officers in charge of the major phase of Ranger training and shall assist those officers in making informed daily "go" and "no-go" decisions regarding training in light of all relevant conditions, including conditions of terrain, weather, water, and climate and other conditions.

(Added P.L. 104–106, § 562(a)(1), Feb. 10, 1996, 110 Stat. 323.)

§ 4306. Service schools: leaves of absence for instructors

The officer in charge of an Army service school may grant a leave of absence for the period of the suspension of the ordinary academic studies, without reduction of pay or allowances, to any officer on duty exclusively as an instructor at the school.

(Aug. 10, 1956, ch. 1041, 70A Stat. 235.)

[§§ 4307 and 4308. Repealed. P.L. 104–106, § 1624(a)(1), Feb. 10, 1996, 110 Stat. 522]

§ 4309. Rifle ranges: availability for use by members and civilians

(a) RANGES AVAILABLE.—All rifle ranges constructed in whole or in part with funds provided by the United States may be used by members of the armed forces and by persons capable of bearing arms.

(b) MILITARY RANGES.—(1) In the case of a rifle range referred to in subsection (a) that is located on a military installation, the Secretary concerned may establish reasonable fees for the use by civilians of that rifle range to cover the material and supply costs incurred by the armed forces to make that rifle range available to civilians.

(2) Fees collected pursuant to paragraph (1) in connection with the use of a rifle range shall be credited to the appropriation available for the operation and maintenance of that rifle range and shall be available for the operation and maintenance of that rifle range.

(3) Use of a rifle range referred to in paragraph (1) by civilians may not interfere with the use of the range by members of the armed forces.

(c) REGULATIONS.—Regulations to carry out this section with respect to a rifle range shall be prescribed, subject to the approval of the Secretary concerned, by the authorities controlling the rifle range.

(Aug. 10, 1956, ch. 1041, 70A Stat. 236; Nov. 8, 1985, P.L. 99–145, § 1301(b)(3)(A), 99 Stat. 735; Nov. 5, 1990, P.L. 101–510, § 328(e), 104 Stat. 1533; revised in its entirety P.L. 102–484, § 380(b), Oct. 23, 1992, 106 Stat. 2390.)

[§§ 4310 and 4311. Repealed. P.L. 104–106, § 1624(a)(1), Feb. 10, 1996, 110 Stat. 522]

[§§ 4312 and 4313. Repealed. P.L. 105–225, § 6(b), Aug. 12, 1998, 112 Stat. 1499]

§ 4314. United States Army Command and General Staff College degree

Under regulations prescribed by the Secretary of the Army, and with the approval of a nationally recognized civilian accrediting association approved by the Secretary of Education, the Commandant of the United States Army Command and General Staff College may upon recommendation by the faculty confer the degree of master of military art and science upon graduates of the college who have fulfilled the following degree requirements: a minimum of thirty semester hours of graduate credit, including a masters thesis of six to eight semester hours, and a demonstration of competence in the discipline of military art and science as evidenced by satisfactory performance on a general comprehensive examination. These requirements may be altered only with the approval of such association.

(Added P.L. 93–365, § 708(a)(1), Aug. 5, 1974, 88 Stat. 407; amended P.L. 96–513, § 512(11), Dec. 12, 1980, 94 Stat. 2929; P.L. 101–510, § 1322(a)(13), Nov. 5, 1990, 104 Stat. 1671.)

§ 4315. The Judge Advocate General's School: master of laws in military law

Under regulations prescribed by the Secretary of the Army, the Commandant of the Judge Advocate General's School of the Army may, upon recommendation by the faculty of such school, confer the degree of master of laws (LL.M.) in military law upon graduates of the school who have fulfilled the requirements for that degree.

(Added P.L. 100–180, § 504(a), Dec. 4, 1987, 101 Stat. 1086.)

§ 4316. Reporting requirements

The Secretary of the Army shall biennially submit to the Congress a report that specifies the overall expenditures for programs and activities under this chapter and any progress made with respect to achieving financial self-sufficiency of the programs and activities.

(Added P.L. 102–484, § 380(d), Oct. 23, 1992, 106 Stat. 2391; amended P.L. 104–106, § 1624(b)(2), Feb. 10, 1996, 110 Stat. 522.)

§ 4317. Military history fellowships

(a) FELLOWSHIPS.—The Secretary of the Army shall prescribe regulations under which the Secretary may award fellowships in military history of the Army to the persons described in subsection (b).

(b) ELIGIBLE PERSONS.—The persons eligible for awards of fellowships under this section are citizens and nationals of the United States who—

(1) are graduate students in United States military history;

(2) have completed all requirements for a doctoral degree other than preparation of a dissertation; and

(3) agree to prepare a dissertation in a subject area of military history determined by the Secretary.

(c) REGULATIONS.—The regulations prescribed under this section shall include—

(1) the criteria for award of fellowships;

(2) the procedures for selecting recipients;

(3) the basis for determining the amount of a fellowship; and

(4) the total amount that may be awarded as fellowships during an academic year.

(Added P.L. 102–484, § 1078(a), Oct. 23, 1992, 106 Stat. 2511; amended P.L. 103–35, § 201(b)(2)(A), May 31, 1993, 107 Stat. 98.)

§ 4318. Drill sergeant trainees: human relations training

(a) HUMAN RELATIONS TRAINING REQUIRED.—The Secretary of the Army shall include as part of the training program for drill sergeants a course in human relations. The course shall be a minimum of two days in duration.

(b) RESOURCES.—In developing a human relations course under this section, the Secretary shall use the capabilities and expertise of the Defense Equal Opportunity Management Institute (DEOMI).

(Added P.L. 105–85, § 557(a)(1), Nov. 18, 1997, 111 Stat. 1750.)

§ 4319. Recruit basic training: separate housing for male and female recruits

(a) PHYSICALLY SEPARATE HOUSING.—(1) The Secretary of the Army shall provide for housing male recruits and female recruits separately and securely from each other during basic training.

(2) To meet the requirements of paragraph (1), the sleeping areas and latrine areas provided for male recruits shall be physically separated from the sleeping areas and latrine areas provided for female recruits by permanent walls, and the areas for male recruits and the areas for female recruits shall have separate entrances.

(3) The Secretary shall ensure that, when a recruit is in an area referred to in paragraph (2), the area is supervised by one or more persons who are authorized and trained to supervise the area.

(b) ALTERNATIVE SEPARATE HOUSING.—If male recruits and female recruits cannot be housed as provided under subsection (a) by October 1, 2001, at a particular installation, the Secretary of the Army shall require (on and after that date) that male recruits in basic training at such installation be housed in barracks or other troop housing facilities that are only for males and that female recruits in basic training at such installation be housed in barracks or other troop housing facilities that are only for females.

(c) CONSTRUCTION PLANNING.—In planning for the construction of housing to be used for housing recruits during basic training, the Secretary of the Army shall ensure that the housing is to be constructed in a manner that facilitates the housing of male recruits and female recruits separately and securely from each other.

(d) BASIC TRAINING DEFINED.—In this section, the term "basic training" means the initial entry training program of the Army that constitutes the basic training of new recruits.

(Added P.L. 105–261, § 521(a)(1), Oct. 17, 1998, 112 Stat. 2009.)

§ 4320. Recruit basic training: privacy

The Secretary of the Army shall require that access by drill sergeants and other training personnel to a living area in which recruits are housed during basic training shall be limited after the end of the training day, other than in the case of an emergency or other exigent circumstance, to drill sergeants and other training personnel who are of the same sex as the recruits housed in that living area or to superiors in the chain of command of those recruits who, if not of the same sex as the recruits housed in that living area, are accompanied by a member (other than a recruit) who is of the same sex as the recruits housed in that living area.

(Added P.L. 105–261, § 522(a)(1), Oct. 17, 1998, 112 Stat. 2012).

§ 4321. United States Army War College: master of strategic studies degree

Under regulations prescribed by the Secretary of the Army, the Commandant of the United States Army War College, upon the recommendation of the faculty and dean of the college, may confer the degree of master of strategic studies upon graduates of the college who have fulfilled the requirements for that degree.

(Added P.L. 106–65, § 542(a), Oct. 5, 1999, 113 Stat. 607.)

CHAPTER 403—UNITED STATES MILITARY ACADEMY

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§ 4331. Establishment; Superintendent; faculty [1]

(a) There is in the Department of the Army a United States Military Academy, at West Point, New York (hereinafter in this chapter referred to as the "Academy"), for the instruction and preparation for military service of selected persons called "cadets". The organization of the Academy shall be prescribed by the Secretary of the Army.

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[1] Section 553 of the National Defense Authorization Act for Fiscal Year 1995 (P.L. 103–337; 108 Stat. 2772) provides:

SEC. 553. PROHIBITION ON IMPOSITION OF ADDITIONAL CHARGES OR FEES FOR ATTENDANCE AT CERTAIN ACADEMIES.

(a) PROHIBITION.—Except as provided in subsection (b), no charge or fee for tuition, room, or board for attendance at an academy named in subsection (c) may be imposed unless the charge or fee is specifically authorized by a law enacted after [Oct. 5, 1994].

(b) EXCEPTION.—The prohibition specified in subsection (a) shall not apply with respect to any item or service provided to cadets or midshipmen at an academy named in subsection (c) for which a charge or fee is imposed as of [Oct. 5, 1994]. The Secretary of Defense or the Secretary of Transportation, as the case shall be, shall notify Congress of any change made by an academy in the amount of a charge or fee authorized under this subsection.

(c) COVERED ACADEMIES.—This section applies to the following:

(1) The United States Military Academy.

(2)–(5) [omitted]

(b) There shall be at the Academy the following:

(1) A Superintendent.

(2) A Dean of the Academic Board, who is a permanent professor.

(3) A Commandant of Cadets.

(4) Twenty-two permanent professors.

(5) A chaplain.

(6) A director of admissions.

(Aug. 10, 1956, ch. 1041, 70A Stat. 238; Aug. 6, 1958, P.L. 85–600, § 1(8), 72 Stat. 522; Aug. 21, 1958, P.L. 85–723, 72 Stat. 711; Oct. 30, 1978, P.L. 95–551, § 1, 92 Stat. 2069; Dec. 12, 1980, P.L. 96–513, § 512(12), 94 Stat. 2929; Oct. 23, 1992, P.L. 102–484, § 523(a), 106 Stat. 2409; Nov. 30, 1993, P.L. 103–160, § 533(a)(3), 107 Stat. 1658.)

§ 4332. Departments and professors: titles

(a) The Secretary of the Army may prescribe the titles of each of the departments of instruction and the professors of the Academy. However, the change of the title of a department or officer does not affect the status, rank, or eligibility for promotion or retirement of, or otherwise prejudice, a professor at the Academy.

(b) Upon becoming the senior professor in a department, a permanent professor thereby becomes the head of that department.

(Aug. 10, 1956, ch. 1041, 70A Stat. 238.)

§ 4333. Superintendent; faculty: appointment and detail

(a) The Superintendent and the Commandant of Cadets of the Academy shall be detailed to those positions by the President from any branch of the Army. Other officers on duty at the Academy, except the permanent professors, may be detailed from any branch of the Army.

(b) The permanent professors of the Academy shall be appointed by the President, by and with the advice and consent of the Senate.

(c) The director of admissions of the Academy shall be appointed by the President, by and with the advice and consent of the Senate, and shall perform such duties as the Superintendent of the Academy may prescribe with the approval of the Secretary of the Army.

(d) Any officer of the Regular Army in a grade above captain may be detailed to perform the duties of director of admissions without being appointed as director of admissions. Such a detail does not affect his position on the active-duty list.

(e) No graduate of the Academy may be appointed or detailed to serve at the Academy as a professor or instructor, or as an assistant to a professor or instructor, within two years after his graduation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 238; Aug. 6, 1958, P.L. 85–600, § 1(9), 72 Stat. 522; Oct. 30, 1978, P.L. 95–551, § 2, 92 Stat. 2069; Dec. 12, 1980, P.L. 96–513, § 502(24), 94 Stat. 2910.)

§ 4333a. Superintendent: condition for detail to position

As a condition for detail to the position of Superintendent of the Academy, an officer shall acknowledge that upon termination of that detail the officer shall be retired.

(Added P.L. 106–65, § 532(a)(1)(B), Oct. 5, 1999, 113 Stat. 603.)

§ 4334. Command and supervision

(a) The supervision and charge of the Academy is in the Department of the Army, under officers of the Army detailed to that duty by the Secretary of the Army.

(b) The immediate government of the Academy is under the Superintendent, who is also the commanding officer of the Academy and of the military post at West Point.

(c) The Commandant of Cadets is the immediate commander of the Corps of Cadets, and is in charge of the instruction of the Corps in tactics.

(d) The permanent professors and the director of admissions exercise command only in the academic department of the Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 239; Aug. 6, 1958, P.L. 85–600, § 1(10), 72 Stat. 523; Oct. 30, 1978, P.L. 95–551, § 2, 92 Stat. 2069.)

§ 4335. Dean of Academic Board

(a) The Dean of the Academic Board shall be appointed as an additional permanent professor from the permanent professors who have served as heads of departments of instruction at the Academy.

(b) The Dean of the Academic Board shall perform such duties as the Superintendent of the Academy may prescribe with the approval of the Secretary of the Army.

(c) While serving as Dean of the Academic Board, an officer of the Army who holds a grade lower than brigadier general shall hold the grade of brigadier general, if appointed to that grade by the President, by and with the advice and consent of the Senate. The retirement age of an officer so appointed is that of a permanent professor of the Academy. An officer so appointed is counted for purposes of the limitation in section 526(a) of this title on general officers of the Army on active duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 239; Sept. 2, 1958, P.L. 85–861, § 33(a)(46)(A), 72 Stat. 1567; Nov. 14, 1986, P.L. 99–661, § 508(a), 100 Stat. 3866; Oct. 23, 1992, P.L. 102–484, § 521(a), 106 Stat. 2409; P.L. 106–65, § 533(a), Oct. 5, 1999, 113 Stat. 604.)

§ 4336. Permanent professors; director of admissions

(a) A permanent professor of the Academy, other than the Dean of the Academic Board, who is the head of a department of instruction, or who has served as such a professor for more than six years, has the grade of colonel. However, a permanent professor appointed from the Regular Army has the grade of colonel after the date when he completes six years of service as a professor, or after the date on which he would have been promoted had he been selected for promotion from among officers in the promotion zone, whichever is earlier. All other permanent professors have the grade of lieutenant colonel.

(b) A person appointed as director of admissions of the Academy has the regular grade of lieutenant colonel, and, after he has served six years as director of admissions, has the regular grade of colonel. However, a person appointed from the Regular Army has the regular grade of colonel after the date when he completes six years of service as director of admissions, or after the date on which he would have been promoted had he been selected for pro-

motion from among officers in the promotion zone, whichever is earlier.

(Aug. 10, 1956, ch. 1041, 70A Stat. 239; Aug. 6, 1958, P.L. 85–600, § 1(11), 72 Stat. 523; Sept. 2, 1958, P.L. 85–861, § 33(a)(46)(B), 72 Stat. 1567; Oct. 30, 1978, P.L. 95–551, §§ 2, 4(a), 92 Stat. 2069; Dec. 12, 1980, P.L. 96–513, § 218(a), § 502(25), 94 Stat. 2886, 2911; Oct. 19, 1984, P.L. 98–525, § 533(d)(1), 98 Stat. 2528.)

§ 4337. Chaplain

There shall be a chaplain at the Academy, who must be a clergyman, appointed by the President for a term of four years. The chaplain is entitled to the same allowances for public quarters as are allowed to a captain, and to fuel and light for quarters in kind. The chaplain may be reappointed.

(Aug. 10, 1956, ch. 1041, 70A Stat. 239; Sept. 7, 1962, P.L. 87–651, § 117, 76 Stat. 513.)

§ 4338. Civilian faculty: number; compensation

(a) The Secretary of the Army may employ as many civilians as professors, instructors, and lecturers at the Academy as the Secretary considers necessary.

(b) The compensation of persons employed under this section is as prescribed by the Secretary.

(c) The Secretary of the Army may, notwithstanding the provisions of subchapter V of chapter 55 of title 5 or section 6101 of such title, prescribe for persons employed under this section the following:

(1) The work schedule, including hours of work and tours of duty, set forth with such specificity and other characteristics as the Secretary determines appropriate.

(2) Any premium pay or compensatory time off for hours of work or tours of duty in excess of the regularly scheduled hours or tours of duty.

(Added P.L. 103–160, § 533(a)(1), Nov. 30, 1993, 107 Stat. 1658; amended P.L. 106–65, § 1107(a), Oct. 5, 1999, 113 Stat. 778.)

[§ 4339. Repealed. P.L. 89–716, § 1, Nov. 2, 1966, 80 Stat. 1114]

§ 4340. Quartermaster

The Secretary of the Army shall detail a commissioned officer of the Army as quartermaster for the Corps of Cadets. The quartermaster shall—

(1) buy and issue all supplies for the cadets;

(2) buy and issue all provisions for the mess; and

(3) supervise the mess.

(Aug. 10, 1956, ch. 1041, 70A Stat. 240.)

§ 4341. Faculty and other officers: leaves of absence

The Superintendent of the Academy may grant a leave of absence for the period of the suspension of the ordinary academic studies, without deduction of pay or allowances, to a professor, assistant professor, instructor, or other officer of the Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 240.)

§ 4341a. Cadets: appointment by the President

Cadets at the Academy shall be appointed by the President alone. An appointment is conditional until the cadet is admitted.

(Added P.L. 97–60, § 203(a)(2)(A), Oct. 14, 1981, 95 Stat. 1006.)

§ 4342. Cadets: appointment; numbers, territorial distribution [2]

(a) The authorized strength of the Corps of Cadets of the Academy (determined for any year as of the day before the last day of the academic year) is 4,000. Subject to that limitation, cadets are selected as follows:

(1) 65 cadets selected in order of merit as established by competitive examinations from the children of members of the armed forces who were killed in action or died of, or have a service-connected disability rated at not less than 100 per centum resulting from, wounds or injuries received or diseases contracted in, or preexisting injury or disease aggravated by, active service, children of members who are in a "missing status" as defined in section 551(2) of title 37, and children of civilian employees who are in "missing status" as defined in section 5561(5) of title 5. The determination of the Department of Veterans Affairs as to service connection of the cause of death or disability, and the percentage at which the disability is rated, is binding upon the Secretary of the Army.

(2) Five cadets nominated at large by the Vice President or, if there is no Vice President, by the President pro tempore of the Senate.

(3) Ten cadets from each State, five of whom are nominated by each Senator from that State.

(4) Five cadets from each congressional district, nominated by the Representative from the district.

(5) Five cadets from the District of Columbia, nominated by the Delegate to the House of Representatives from the District of Columbia.

(6) Two cadets from the Virgin Islands, nominated by the Delegate in Congress from the Virgin Islands.

(7) Six cadets from Puerto Rico, five of whom are nominated by the Resident Commissioner from Puerto Rico and one who is a native of Puerto Rico nominated by the Governor of Puerto Rico.

(8) Two cadets from Guam, nominated by the Delegate in Congress from Guam.

(9) One cadet from American Samoa, nominated by the Delegate in Congress from American Samoa.

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[2] Section 531(a) of the National Defense Authorization Act for Fiscal Year 2000 (P.L. 106–65; 113 Stat. 601) provides:

(a) UNITED STATES MILITARY ACADEMY.—(1) The Secretary of the Army shall take such action as necessary to ensure that the United States Military Academy is in compliance with the USMA cadet strength limit not later than the day before the last day of the 2001–2002 academic year.

(2) The Secretary of the Army may provide for a variance to the USMA cadet strength limit—

(A) [omitted]; and

(B) as of the day before the last day of the 2000–2001 academic year of not more than 2½ percent.

(3) For purposes of this subsection—

(A) the USMA cadet strength limit is the maximum of 4,000 cadets established for the Corps of Cadets at the United States Military Academy by section 511 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102–190; 10 U.S.C. 4342 note), reenacted in section 4342(a) of title 10, United States Code, by the amendment made by subsection (b)(1); and

(B) the last day of an academic year is graduation day.

(10) One cadet from the Commonwealth of the Northern Mariana Islands, nominated by the resident representative from the commonwealth.

Each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, is entitled to nominate 10 persons for each vacancy that is available to him under this section. Nominees may be submitted without ranking or with a principal candidate and 9 ranked or unranked alternates. Qualified nominees not selected for appointment under this subsection shall be considered qualified alternates for the purposes of selection under other provisions of this chapter.

(b) In addition, there may be appointed each year at the Academy cadets as follows:

(1) one hundred selected by the President from the children of members of an armed force who—

(A) are on active duty (other than for training) and who have served continuously on active duty for at least eight years;

(B) are, or who died while they were, retired with pay or granted retired or retainer pay;

(C) are serving as members of reserve components and are credited with at least eight years of service computed under section 12733 of this title; or

(D) would be, or who died while they would have been, entitled to retired pay under chapter 1223 of this title except for not having attained 60 years of age;

however, a person who is eligible for selection under clause (1) of subsection (a) may not be selected under this clause.

(2) 85 nominated by the Secretary of the Army from enlisted members of the Regular Army.

(3) 85 nominated by the Secretary of the Army from enlisted members of reserve components of the Army.

(4) 20 nominated by the Secretary of the Army, under regulations prescribed by him, from the honor graduates of schools designated as honor schools by the Department of the Army, the Department of the Navy, or the Department of the Air Force, and from members of the Reserve Officers' Training Corps.

(5) 150 selected by the Secretary of the Army in order of merit (prescribed pursuant to section 4343 of this title) from qualified alternates nominated by persons named in clauses (3) and (4) of subsection (a).

(c) The President may also appoint as cadets at the Academy children of persons who have been awarded the Medal of Honor for acts performed while in the armed forces.

(d) The Superintendent may nominate for appointment each year 50 persons from the country at large. Persons nominated under this paragraph may not displace any appointment authorized under clauses (2) through (9) of subsection (a) and may not cause the total strength of the Corps of Cadets to exceed the authorized number.

(e) If the annual quota of cadets under subsection (b) (1), (2), (3) is not filled, the Secretary may fill the vacancies by nominating for appointment other candidates from any of these sources who

were found best qualified on examination for admission and not otherwise nominated.

(f) Each candidate for admission nominated under clauses (3) through (9) of subsection (a) must be domiciled in the State, or in the congressional district, from which he is nominated, or in the District of Columbia, Puerto Rico, American Samoa, Guam, or the Virgin Islands, if nominated from one of those places.

(g) The Secretary of the Army may limit the number of cadets authorized to be appointed under this section to the number that can be adequately accommodated at the Academy, as determined by the Secretary after consulting with the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, subject to the following:

(1) Cadets chargeable to each nominating authority named in subsection (a) (3) or (4) may not be limited to less than four.

(2) If the Secretary limits the number of appointments under subsection (a) (3) or (4), appointments under subsection (b)(1)–(4) are limited as follows:

(A) 27 appointments under subsection (b)(1);

(B) 27 appointments under subsection (b)(2);

(C) 27 appointments under subsection (b)(3); and

(D) 13 appointments under subsection (b)(4).

(3) If the Secretary limits the number of appointments under subsection (b)(5), appointments under subsection (b)(2)–(4) are limited as follows:

(A) 27 appointments under subsection (b)(2);

(B) 27 appointments under subsection (b)(3); and

(C) 13 appointments under subsection (b)(4).

(4) The limitations provided for in this subsection do not affect the operation of subsection (e).

(h) The Secretary of the Army shall furnish to any Member of Congress, upon the written request of such Member, the name of the Congressman or other nominating authority responsible for the nomination of any named or identified person for appointment to the Academy.

(i) For purposes of the limitation in subsection (a) establishing the aggregate authorized strength of the Corps of Cadets, the Secretary of the Army may for any year (beginning with the 2001–2002 academic year) permit a variance in that limitation by not more than one percent. In applying that limitation, and any such variance, the last day of an academic year shall be considered to be graduation day.

(Aug. 10, 1956, ch. 1041, 70A Stat. 240; Sept. 2, 1958, P.L. 85–861, § 33(a)(26), 72 Stat. 1565; Sept. 14, 1962, P.L. 87–663, § 1 (1), (2), 76 Stat. 547; Mar. 3, 1964, P.L. 88–276, § 1(1), 78 Stat. 148; Oct. 13, 1966, P.L. 89–650, § 1(1)–(4), 80 Stat. 896; July 5, 1968, P.L. 90–374, 82 Stat. 283; Oct. 22, 1968, P.L. 90–623, § 2(8), 82 Stat. 1314; Sept. 22, 1970, P.L. 91–405, § 204(c), 84 Stat. 852; Aug. 7, 1972, P.L. 92–365, § 1(1), 86 Stat. 505; Nov. 29, 1973, P.L. 93–171, § 1(1)–(4), 87 Stat. 690; Oct. 7, 1975, P.L. 94–106, § 803(b)(1), 89 Stat. 538; Dec. 12, 1980, P.L. 96–513, § 512(13), 94 Stat. 2930; Dec. 24, 1980, P.L. 96–600, § 2(a), 94 Stat. 3493; Oct. 14, 1981, P.L. 97–60, § 203(a)(1), 95 Stat. 1006; Sept. 24, 1983, P.L. 98–94, § 1005(a)(1), (b)(1), 97 Stat. 660; Nov. 29, 1989, P.L. 101–189, § 1621(a)(1), 103 Stat. 1602; Nov. 5, 1990, P.L. 101–510, § 532(a)(1), 104 Stat. 1563; Nov. 30, 1993, § 531, P.L. 103–160, 107 Stat. 1657; Oct. 5, 1994, P.L. 103–337, § 1672(c)(3), 108 Stat. 3015; Feb. 10, 1996, P.L. 104–106, §§ 532(a), 1502(a)(1), Feb. 10, 1996, 110 Stat. 314, 502; P.L. 105–85, § 1073(a)(62), Nov. 18, 1997, 111 Stat. 1903; P.L. 106–65, §§ 531(b)(1), 1067(1), Oct. 5, 1999, 113 Stat. 602, 774; Oct. 30, 2000, P.L. 106–398, § 1[531(a)], 114 Stat. 1654, 1654A–109.)

§ 4343. Cadets: appointment; to bring Corps to full strength

If it is determined that, upon the admission of a new class to the Academy, the number of cadets at the Academy will be below the authorized number, the Secretary of the Army may fill the vacancies by nominating additional cadets from qualified candidates designated as alternates and from other qualified candidates who competed for nomination and are recommended and found qualified by the Academic Board. At least three-fourths of those nominated under this section shall be selected from qualified alternates nominated by the persons named in clauses (2) through (8) of section 4342(a) of this title, and the remainder from qualified candidates holding competitive nominations under any other provision of law. An appointment under this section is an additional appointment and is not in place of an appointment otherwise authorized by law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 242; Mar. 3, 1964, P.L. 88–276, § 1(2), 78 Stat. 150; Nov. 29, 1973, P.L. 93–171, § 1(5), 87 Stat. 690; P.L. 102–25, § 701(f)(5), April 6, 1991, 105 Stat. 115.)

§ 4344. Selection of persons from foreign countries

(a)(1) The Secretary of the Army may permit not more than 40 persons at any one time from foreign countries to receive instruction at the Academy. Such persons shall be in addition to the authorized strength of the Corps of the Cadets of the Academy under section 4342 of this title.

(2) The Secretary of the Army, upon approval by the Secretary of Defense, shall determine the countries from which persons may be selected for appointment under this section and the number of persons that may be selected from each country. The Secretary of the Army may establish entrance qualifications and methods of competition for selection among individual applicants under this section and shall select those persons who will be permitted to receive instruction at the Academy under this section.

(3) In selecting persons to receive instruction under this section from among applicants from the countries approved under paragraph (2), the Secretary of the Army shall give a priority to persons who have a national service obligation to their countries upon graduation from the Academy.

(b)(1) A person receiving instruction under this section is entitled to the pay, allowances, and emoluments of a cadet appointed from the United States, and from the same appropriations.

(2) Each foreign country from which a cadet is permitted to receive instruction at the Academy under this section shall reimburse the United States for the cost of providing such instruction, including the cost of pay, allowances, and emoluments provided under paragraph (1) unless a written waiver of reimbursement is granted by the Secretary of Defense. The Secretary of the Army shall prescribe the rates for reimbursement under this paragraph, except that the reimbursement rates may not be less than the cost to the United States of providing such instruction, including pay, allowances, and emoluments, to a cadet appointed from the United States.

(3) The amount of reimbursement waived under paragraph (2) may not exceed 50 percent of the per-person reimbursement amount otherwise required to be paid by a foreign country under

such paragraph, except in the case of not more than 20 persons receiving instruction at the Academy under this section at any one time.

(c)(1) Except as the Secretary of the Army determines, a person receiving instruction under this section is subject to the same regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as a cadet at the Academy appointed from the United States. The Secretary may prescribe regulations with respect to access to classified information by a person receiving instruction under this section that differ from the regulations that apply to a cadet at the Academy appointed from the United States.

(2) A person receiving instruction under this section is not entitled to an appointment in an armed force of the United States by reason of graduation from the Academy.

(d) A person receiving instruction under this section is not subject to section 4346(d) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 242; Sept. 24, 1983, P.L. 98–94, § 1004(a)(1), 97 Stat. 657; Nov. 18, 1997, P.L. 105–85, § 543(a), 111 Stat. 1743; P.L. 106–65, § 534(a), Oct. 5, 1999, 113 Stat. 605; Oct. 30, 2000, P.L. 106–398, § 1[532(a)], 114 Stat. 1654, 1654A–110.)

§ 4345. Exchange program with foreign military academies

(a) EXCHANGE PROGRAM AUTHORIZED.—The Secretary of the Army may permit a student enrolled at a military academy of a foreign country to receive instruction at the Academy in exchange for a cadet receiving instruction at that foreign military academy pursuant to an exchange agreement entered into between the Secretary and appropriate officials of the foreign country. Students receiving instruction at the Academy under the exchange program shall be in addition to persons receiving instruction at the Academy under section 4344 of this title.

(b) LIMITATIONS ON NUMBER AND DURATION OF EXCHANGES.—An exchange agreement under this section between the Secretary and a foreign country shall provide for the exchange of students on a one-for-one basis each fiscal year. Not more than 24 cadets and a comparable number of students from all foreign military academies participating in the exchange program may be exchanged during any fiscal year. The duration of an exchange may not exceed the equivalent of one academic semester at the Academy.

(c) COSTS AND EXPENSES.—(1) A student from a military academy of a foreign country is not entitled to the pay, allowances, and emoluments of a cadet by reason of attendance at the Academy under the exchange program, and the Department of Defense may not incur any cost of international travel required for transportation of such a student to and from the sponsoring foreign country.

(2) The Secretary may provide a student from a foreign country under the exchange program, during the period of the exchange, with subsistence, transportation within the continental United States, clothing, health care, and other services to the same extent that the foreign country provides comparable support and services to the exchanged cadet in that foreign country.

(3) The Academy shall bear all costs of the exchange program from funds appropriated for the Academy. Expenditures in support

of the exchange program may not exceed $120,000 during any fiscal year.

(d) APPLICATION OF OTHER LAWS.—Subsections (c) and (d) of section 4344 of this title shall apply with respect to a student enrolled at a military academy of a foreign country while attending the Academy under the exchange program.

(e) REGULATIONS.—The Secretary shall prescribe regulations to implement this section. Such regulations may include qualification criteria and methods of selection for students of foreign military academies to participate in the exchange program.

(Added P.L. 105–85, § 542(a)(1), Nov. 18, 1997, 111 Stat. 1740 [prior § 4345 repealed P.L. 98–94, § 1004(a)(2), Sept. 24, 1983, 97 Stat. 658]; amended P.L. 106–65, § 535(a), Oct. 5, 1999, 113 Stat. 605.)

§ 4346. Cadets: requirements for admission

(a) To be eligible for admission to the Academy a candidate must be at least 17 years of age and must not have passed his twenty-third birthday on July 1 of the year in which he enters the Academy.

(b) To be admitted to the Academy, an appointee must show, by an examination held under regulations prescribed by the Secretary of the Army, that he is qualified in the subjects prescribed by the Secretary.

(c) A candidate designated as a principal or an alternate for appointment as a cadet shall appear for physical examination at a time and place designated by the Secretary.

(d) To be admitted to the Academy, an appointee must take and subscribe to the following oath—

"I, _____, do solemnly swear that I will support the Constitution of the United States, and bear true allegiance to the National Government; that I will maintain and defend the sovereignty of the United States, paramount to any and all allegiance, sovereignty, or fealty I may owe to any State or country whatsoever; and that I will at all times obey the legal orders of my superior officers, and the Uniform Code of Military Justice."

If a candidate for admission refuses to take this oath, his appointment is terminated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 242; Sept. 23, 1996, P.L. 104–201, § 555(b), 110 Stat. 2527.)

§ 4347. Cadets; nominees: effect of redistricting of States

If as a result of redistricting a State the domicile of a cadet, or a nominee, nominated by a Representative falls within a congressional district other than that from which he was nominated, he is charged to the district in which his domicile so falls. For this purpose, the number of cadets otherwise authorized for that district is increased to include him. However, the number as so increased is reduced by one if he fails to become a cadet or when he is finally separated from the Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 243.)

§ 4348. Cadets: agreement to serve as officer

(a) Each cadet shall sign an agreement with respect to the cadet's length of service in the armed forces. The agreement shall provide that the cadet agrees to the following:

(1) That the cadet will complete the course of instruction at the Academy.

(2) That upon graduation from the Academy the cadet—

(A) will accept an appointment, if tendered, as a commissioned officer of the Regular Army or the Regular Air Force; and

(B) will serve on active duty for at least five years immediately after such appointment.

(3) That if an appointment described in paragraph (2) is not tendered or if the cadet is permitted to resign as a regular officer before completion of the commissioned service obligation of the cadet, the cadet—

(A) will accept an appointment as a commissioned officer as a Reserve for service in the Army Reserve or the Air Force Reserve; and

(B) will remain in that reserve component until completion of the commissioned service obligation of the cadet.

(b)(1) The Secretary of the Army may transfer to the Army Reserve, and may order to active duty for such period of time as the Secretary prescribes (but not to exceed four years), a cadet who breaches an agreement under subsection (a). The period of time for which a cadet is ordered to active duty under this paragraph may be determined without regard to section 651(a) of this title.

(2) A cadet who is transferred to the Army Reserve under paragraph (1) shall be transferred in an appropriate enlisted grade or rating, as determined by the Secretary.

(3) For the purposes of paragraph (1), a cadet shall be considered to have breached an agreement under subsection (a) if the cadet is separated from the Academy under circumstances which the Secretary determines constitute a breach by the cadet of the cadet's agreement to complete the course of instruction at the Academy and accept an appointment as a commissioned officer upon graduation from the Academy.

(c) The Secretary of the Army shall prescribe regulations to carry out this section. Those regulations shall include—

(1) standards for determining what constitutes, for the purpose of subsection (b), a breach of an agreement under subsection (a);

(2) procedures for determining whether such a breach has occurred; and

(3) standards for determining the period of time for which a person may be ordered to serve on active duty under subsection (b).

(d) In this section, the term "commissioned service obligation," with respect to an officer who is a graduate of the Academy, means the period beginning on the date of the officer's appointment as a commissioned officer and ending on the sixth anniversary of such appointment or, at the discretion of the Secretary of Defense, any later date up to the eighth anniversary of such appointment.

(e)(1) This section does not apply to a cadet who is not a citizen or national of the United States.

(2) In the case of a cadet who is a minor and who has parents or a guardian, the cadet may sign the agreement required by subsection (a) only with the consent of a parent or guardian.

(Aug. 10, 1956, ch. 1041, 70A Stat. 243; Mar. 3, 1964, P.L. 88–276, § 5(a), 78 Stat. 153; Oct. 13, 1964, P.L. 88–647, § 301(9), 78 Stat. 1072; Oct. 19, 1984, P.L. 98–525, §§ 541(a), 542(b), 98 Stat. 2529; revised in its entirety P.L. 99–195, § 512(a), Nov. 8, 1985, 99 Stat. 623; P.L. 101–189, §§ 511(b), 1622(e)(5), Nov. 29, 1989, 103 Stat. 1438, 1605; Feb. 10, 1996, P.L. 104–106, § 531(a), 110 Stat. 314.)

§ 4349. Cadets: organization of Corps; service; instruction

(a) The Corps of Cadets shall be divided into companies, as directed by the Superintendent, for the purpose of military instruction. Each company shall be commanded by a commissioned officer of the Army.

(b) A cadet shall perform duties at such places and of such type as the President may direct.

(c) The course of instruction at the Academy is four years.

(d) The Secretary of the Army shall so arrange the course of studies at the Academy that cadets are not required to pursue their studies on Sunday.

(e) The Corps of Cadets shall be trained in the duties of members of the Army, shall be encamped at least three months in each year, and shall be trained in all duties incident to a camp.

(Aug. 10, 1956, ch. 1041, 70A Stat. 243.)

§ 4350. Cadets: clothing and equipment

(a) The Secretary of the Army may prescribe the amount to be credited to a cadet, upon original admission to the Academy, for the cost of his initial issue of clothing and equipment. That amount shall be deducted from his pay. If a cadet is discharged before graduation while owing the United States for pay advanced for the purchase of required clothing and equipment, he shall turn in so much of his clothing and equipment of a distinctive military nature as is necessary to repay the amount advanced. If the value of the clothing and equipment turned in does not cover the amount owed, the indebtedness shall be canceled.

(b) Under such regulations as the Secretary may prescribe, uniforms and equipment shall be furnished to a cadet at the Academy upon his request.

(Aug. 10, 1956, ch. 1041, 70A Stat. 244.)

§ 4351. Cadets: deficiencies in conduct or studies; effect of failure on successor

(a) A cadet who is reported as deficient in conduct or studies and recommended to be discharged from the Academy may not, unless recommended by the Academic Board, be returned or reappointed to the Academy.

(b) Any cadet who fails to pass a required examination because he is deficient in any one subject of instruction is entitled to a reexamination of equal scope and difficulty in that subject, if he applies in writing to the Academic Board within 10 days after he is officially notified of his failure. The reexamination shall be held within 60 days after the date of his application. If the cadet passes the reexamination and is otherwise qualified, he shall be readmitted to the Academy. If he fails, he may not have another examination.

(c) The failure of a member of a graduating class to complete the course with his class does not delay the admission of his successor.

(Aug. 10, 1956, ch. 1041, 70A Stat. 244.)

§ 4352. Cadets: hazing

(a) Subject to the approval of the Secretary of the Army, the Superintendent of the Academy shall issue regulations—

(1) defining hazing;

(2) designed to prevent that practice; and

(3) prescribing dismissal, suspension, or other adequate punishment for violations.

(b) If a cadet who is charged with violating a regulation issued under subsection (a), the penalty for which is or may be dismissal from the Academy, requests in writing a trial by a general court-martial, he may not be dismissed for that offense except under sentence of such a court.

(c) A cadet dismissed from the Academy for hazing may not be reappointed to the Corps of Cadets, and is ineligible for appointment as a commissioned officer in a regular component of the Army, Navy, Air Force, or Marine Corps, until two years after the graduation of his class.

(Aug. 10, 1956, ch. 1041, 70A Stat. 244.)

§ 4353. Cadets: degree and commission on graduation

(a) Under such conditions as the Secretary of the Army may prescribe, the Superintendent of the Academy may confer the degree of bachelor of science upon graduates of the Academy.

(b) Notwithstanding any other provision of law, a cadet who completes the prescribed course of instruction may, upon graduation, be appointed a second lieutenant in the Regular Army under section 531 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 245; Sept. 2, 1958, P.L. 85–861, § 1(103), 72 Stat. 1489; Dec. 12, 1980, P.L. 96–513, § 502(26), 94 Stat. 2911.)

§ 4354. Buildings and grounds: memorial hall; buildings for religious worship

(a) The memorial hall at the Academy is a repository for statues, busts, mural tablets, portraits of distinguished and deceased officers and graduates of the Academy, paintings of battle scenes, trophies of war, and other objects that may tend to elevate the military profession. No object may be placed in this hall without the approval of two-thirds of the members of the Academic Board of the Academy by a recorded vote taken by ayes and nays.

(b) The Secretary of the Army may authorize any denomination, sect, or religious body to erect a building for religious worship on the West Point Military Reservation, if its erection will not interfere with the use of the reservation for military purposes and will be without expense to the United States. Such a building shall be removed, or its location changed, without compensation for it and without other expense to the United States, by the denomination, sect, or religious body that erected it, whenever in the opinion of the Secretary public or military necessity so requires.

(Aug. 10, 1956, ch. 1041, 70A Stat. 245.)

§ 4355. Board of Visitors

(a) A Board of Visitors to the Academy is constituted annually of—

(1) the chairman of the Committee on Armed Services of the Senate, or his designee;

(2) three other members of the Senate designated by the Vice President or the President pro tempore of the Senate, two of whom are members of the Committee on Appropriations of the Senate;

(3) the chairman of the Committee on Armed Services of the House of Representatives, or his designee;

(4) four other members of the House of Representatives designated by the Speaker of the House of Representatives, two of whom are members of the Committee on Appropriations of the House of Representatives; and

(5) six persons designated by the President.

(b) The persons designated by the President serve for three years each except that any member whose term of office has expired shall continue to serve until his successor is appointed. The President shall designate two persons each year to succeed the members whose terms expire that year.

(c) If a member of the Board dies or resigns, a successor shall be designated for the unexpired portion of the term by the official who designated the member.

(d) The Board shall visit the Academy annually. With the approval of the Secretary of the Army, the Board or its members may make other visits to the Academy in connection with the duties of the Board or to consult with the Superintendent of the Academy.

(e) The Board shall inquire into the morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy that the Board decides to consider.

(f) Within 60 days after its annual visit, the Board shall submit a written report to the President of its action, and of its views and recommendations pertaining to the Academy. Any report of a visit, other than the annual visit, shall, if approved by a majority of the members of the Board, be submitted to the President within 60 days after the approval.

(g) Upon approval by the Secretary, the Board may call in advisers for consultation.

(h) While performing his duties, each member of the Board and each adviser shall be reimbursed under Government travel regulations for his travel expenses.

(Aug. 10, 1956, ch. 1041, 70A Stat. 245; Dec. 23, 1980, P.L. 96–579, § 13(a), 94 Stat. 3369; Feb. 10, 1996, P.L. 104–106, §§ 1061(e)(2), 1502(a)(12), 110 Stat. 443, 503; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 4356. Use of certain gifts

Under regulations prescribed by the Secretary of the Army, the Superintendent of the Academy may (without regard to section 2601 of this title) accept, hold, administer, invest, and spend any gift, devise, or bequest of personal property of a value of $20,000 or less made to the United States on the condition that such gift, devise, or bequest be used for the benefit of the Academy or any

entity thereof. The Secretary may pay or authorize the payment of all reasonable and necessary expenses in connection with the conveyance or transfer of a gift, devise, or bequest under this section.

(Added P.L. 97–295, § 1(41)(A), Oct. 12, 1982, 96 Stat. 1297.)

§ 4357. Acceptance of guarantees with gifts for major projects

(a) ACCEPTANCE AUTHORITY.—Subject to subsection (c), the Secretary of the Army may accept from a donor or donors a qualified guarantee for the completion of a major project for the benefit of the Academy.

(b) OBLIGATION AUTHORITY.—The amount of a qualified guarantee accepted under this section shall be considered as contract authority to provide obligation authority for purposes of Federal fiscal and contractual requirements. Funds available for a project for which such a guarantee has been accepted may be obligated and expended for the project without regard to whether the total amount of the funds and other resources available for the project (not taking into account the amount of the guarantee) is sufficient to pay for completion of the project.

(c) NOTICE OF PROPOSED ACCEPTANCE.—The Secretary of the Army may not accept a qualified guarantee under this section for the completion of a major project until after the expiration of 30 days following the date upon which a report of the facts concerning the proposed guarantee is submitted to Congress.

(d) PROHIBITION ON COMMINGLING OF FUNDS.—The Secretary of the Army may not enter into any contract or other transaction involving the use of a qualified guarantee and appropriated funds in the same contract or transaction.

(e) DEFINITIONS.—In this section:

(1) MAJOR PROJECT.—The term "major project" means a project for the purchase or other procurement of real or personal property, or for the construction, renovation, or repair of real or personal property, the total cost of which is, or is estimated to be, at least $1,000,000.

(2) QUALIFIED GUARANTEE.—The term "qualified guarantee", with respect to a major project, means a guarantee that—

(A) is made by one or more persons in connection with a donation, specifically for the project, of a total amount in cash or securities that, as determined by the Secretary of the Army, is sufficient to defray a substantial portion of the total cost of the project;

(B) is made to facilitate or expedite the completion of the project in reasonable anticipation that other donors will contribute sufficient funds or other resources in amounts sufficient to pay for completion of the project;

(C) is set forth as a written agreement that provides for the donor to furnish in cash or securities, in addition to the donor's other gift or gifts for the project, any additional amount that may become necessary for paying the cost of completing the project by reason of a failure to obtain from other donors or sources funds or other resources

in amounts sufficient to pay the cost of completing the project; and

(D) is accompanied by—

(i) an irrevocable and unconditional standby letter of credit for the benefit of the Academy that is in the amount of the guarantee and is issued by a major United States commercial bank; or

(ii) a qualified account control agreement.

(3) QUALIFIED ACCOUNT CONTROL AGREEMENT.—The term "qualified account control agreement", with respect to a guarantee of a donor, means an agreement among the donor, the Secretary of the Army, and a major United States investment management firm that—

(A) ensures the availability of sufficient funds or other financial resources to pay the amount guaranteed during the period of the guarantee;

(B) provides for the perfection of a security interest in the assets of the account for the United States for the benefit of the Academy with the highest priority available for liens and security interests under applicable law;

(C) requires the donor to maintain in an account with the investment management firm assets having a total value that is not less than 130 percent of the amount guaranteed; and

(D) requires the investment management firm, at any time that the value of the account is less than the value required to be maintained under subparagraph (C), to liquidate any noncash assets in the account and reinvest the proceeds in Treasury bills issued under section 3104 of title 31.

(4) MAJOR UNITED STATES COMMERCIAL BANK.—The term "major United States commercial bank" means a commercial bank that—

(A) is an insured bank (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813));

(B) is headquartered in the United States; and

(C) has net assets in a total amount considered by the Secretary of the Army to qualify the bank as a major bank.

(5) MAJOR UNITED STATES INVESTMENT MANAGEMENT FIRM.—The term "major United States investment management firm" means any broker, dealer, investment adviser, or provider of investment supervisory services (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) or section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2)) or a major United States commercial bank that—

(A) is headquartered in the United States; and

(B) holds for the account of others investment assets in a total amount considered by the Secretary of the Army to qualify the firm as a major investment management firm.

(Added P.L. 106–65, § 2871(a)(1), Oct. 5, 1999, 113 Stat. 871; amended P.L. 106–398, § 1[1087(a)(17)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291.)

§ 4358. Grants for faculty research for scientific, literary, and educational purposes: acceptance; authorized grantees

(a) ACCEPTANCE OF RESEARCH GRANTS.—The Secretary of the Army may authorize the Superintendent of the Academy to accept qualifying research grants under this section. Any such grant may only be accepted if the work under the grant is to be carried out by a professor or instructor of the Academy for a scientific, literary, or educational purpose.

(b) QUALIFYING GRANTS.—A qualifying research grant under this section is a grant that is awarded on a competitive basis by an entity referred to in subsection (c) for a research project with a scientific, literary, or educational purpose.

(c) ENTITIES FROM WHICH GRANTS MAY BE ACCEPTED.—A grant may be accepted under this section only from a corporation, fund, foundation, educational institution, or similar entity that is organized and operated primarily for scientific, literary, or educational purposes.

(d) ADMINISTRATION OF GRANT FUNDS.—The Secretary shall establish an account for administering funds received as research grants under this section. The Superintendent shall use the funds in the account in accordance with applicable regulations and the terms and conditions of the grants received.

(e) RELATED EXPENSES.—Subject to such limitations as may be provided in appropriations Acts, appropriations available for the Academy may be used to pay expenses incurred by the Academy in applying for, and otherwise pursuing, award of a qualifying research grant.

(f) REGULATIONS.—The Secretary of the Army shall prescribe regulations for the administration of this section.

(Added P.L. 105–261, § 1063(a), Oct. 17, 1998, 112 Stat. 2130.)

[CHAPTER 405—REPEALED]

[§§ 4381 to 4387. Repealed. P.L. 88–647, § 301(10), Oct. 13, 1964, 78 Stat. 1072]

CHAPTER 407—SCHOOLS AND CAMPS

Sec.
4411. Establishment: purpose.
4412. Operation.
4413. Transportation and subsistence during travel.
4414. Quartermaster and ordnance property: sales.
[4415. Repealed.]
4416. Academy of Health Sciences: admission of civilians in physician assistant training program.

§ 4411. Establishment: purpose

The Secretary of the Army may maintain schools and camps for the military instruction and training of persons selected, upon their application, from warrant officers and enlisted members of the Army and civilians, to qualify them for appointment as reserve officers, or enlistment as reserve noncommissioned officers, for service in the Army Reserve.

(Aug. 10, 1956, ch. 1041, 70A Stat. 249.)

§ 4412. Operation

In maintaining schools and camps established under section 4411 of this title, the Secretary of the Army may—

(1) prescribe the periods during which they will be operated;

(2) prescribe regulations for their administration;

(3) prescribe the courses to be taught;

(4) detail members of the Regular Army to designated duties relating to the camps;

(5) use necessary supplies and transportation;

(6) furnish uniforms, subsistence, and medical attendance and supplies to persons attending the camps; and

(7) authorize necessary expenditures from proper Army funds for—

(A) water;

(B) fuel;

(C) light;

(D) temporary structures, except barracks and officers' quarters;

(E) screening;

(F) damages resulting from field exercises;

(G) expenses incident to theoretical winter instruction of trainees; and

(H) other expenses incident to maintaining the camps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 249.)

§ 4413. Transportation and subsistence during travel

(a) There may be furnished to a person attending a school or camp established under section 4411 of this title, for travel to and from that school or camp—

(1) transportation and subsistence;

(2) transportation in kind and a subsistence allowance of one cent a mile; or

(3) a travel allowance of five cents a mile.

(b) The travel allowance for the return trip may be paid in advance.

(c) For the purposes of this section, distance is computed by the shortest usually traveled route, within such territorial limits as the Secretary of the Army may prescribe, from the authorized starting point to the school or camp and return.

(Aug. 10, 1956, ch. 1041, 70A Stat. 250.)

§ 4414. Quartermaster and ordnance property: sales

The Secretary of the Army may sell to a person attending a school or camp established under section 4411 of this title quartermaster and ordnance property necessary for his proper equipment. Sales under this section shall be for cash.

(Aug. 10, 1956, ch. 1041, 70A Stat. 250.)

[§ 4415. Repealed. P.L. 106–398, 1[§ 911(b)], Oct. 30, 2000, 114 Stat. 114 Stat. 1654, 1654A–228]

§ 4416. Academy of Health Sciences: admission of civilians in physician assistant training program

(a) IN GENERAL.—The Secretary of the Army may, pursuant to an agreement entered into with an accredited institution of higher education—

(1) permit students of the institution to attend the didactic portion of the physician assistant training program conducted by the Army Medical Department at the Academy of Health Sciences at Fort Sam Houston, Texas; and

(2) accept from the institution academic services to support the physician assistant training program at the Academy.

(b) AGREEMENT FOR EXCHANGE OF SERVICES.—An agreement entered into with an institution of higher education under this section shall require the institution, in exchange for services provided under paragraph (1) of subsection (a), to provide academic services described in paragraph (2) of such subsection that the Secretary and authorized representatives of the institution consider appropriate.

(c) SELECTION OF STUDENTS.—In consultation with the authorized representatives of the institution of higher education concerned, the Secretary shall prescribe the qualifications and methods of selection for students of the institution to receive instruction at the Academy under this section. The qualifications shall be com-

parable to those generally required for admission to the physician assistant training program at the Academy.

(d) RULES OF ATTENDANCE.—Except as the Secretary determines necessary, a student who receives instruction at the Academy under this section shall be subject to the same regulations governing attendance, discipline, discharge, and dismissal as apply to other persons attending the Academy.

(e) LIMITATIONS.—The Secretary shall ensure the following:

(1) That the Army Medical Department, in carrying out an agreement under this section, does not incur costs in excess of the costs that the department would incur to obtain, by means other than the agreement, academic services that are comparable to those provided by the institution pursuant to the agreement.

(2) That attendance of civilian students at the Academy under this section does not cause a decrease in the number of members of the armed forces enrolled in the physician assistant training program at the Academy.

(f) ANNUAL REPORT.—(1) Each year, the Secretary shall submit to Congress a report on the exchange of services under this section during the year. The report shall contain the following:

(A) The number of civilian students who receive instruction at the Academy under this section.

(B) An assessment of the benefits derived by the United States.

(2) Reports are required under paragraph (1) only for years during which an agreement is in effect under this section.

(Added P.L. 105–85, § 741(a)(1), Nov. 18, 1997, 111 Stat. 1816.)

PART IV—SERVICE, SUPPLY, AND PROCUREMENT

Chap.		Sec.
[431.	Repealed.]	
433.	Procurement	4531
434.	Armaments Industrial Base	4551
435.	Issue of Serviceable Material to Armed Forces	4561
437.	Utilities and Services	4591
439.	Sale of Serviceable Material	4621
441.	Issue of Serviceable Material Other Than to Armed Forces	4651
443.	Disposal of Obsolete or Surplus Material	4681
445.	Disposition of Effects of Deceased Persons; Captured Flags	4712
447.	Transportation	4741
449.	Real Property	4771
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453.	Accountability and Responsibility	4831

[CHAPTER 431—REPEALED]

[§§ 4501, 4502. Repealed. P.L. 103–160, § 822(a)(2), Nov. 30, 1993, 107 Stat. 1704.]

[§ 4503. Repealed. P.L. 103–160, § 827(c), Nov. 30, 1993, 107 Stat. 1712.]

[§ 4504. Repealed. P.L. 103–160, § 822(c)(2), Nov. 30, 1993, 107 Stat. 1706.]

[§ 4505. Repealed. P.L. 103–160, § 823(1), Nov. 30, 1993, 107 Stat. 1706.]

[§§ 4506 to 4508. Repealed. P.L. 103–160, § 822(b)(3), Nov. 30, 1993, 107 Stat. 1705.]

CHAPTER 433—PROCUREMENT

Sec.
[4531. Repealed.]
4532. Factories and arsenals: manufacture at; abolition of.
[4533 to 4535. Repealed.]
4536. Equipment: post bakeries, schools, kitchens, and mess halls.
[4537 to 4539. Repealed.]
4540. Architectural and engineering services.
4541. Army arsenals: treatment of unutilized or underutilized plant-capacity costs.
4542. Technical data packages for large-caliber cannon: prohibition on transfers to foreign countries; exception.
4543. Army industrial facilities: sales of manufactured articles or services outside Department of Defense.

[§ 4531. Repealed. P.L. 103–160, § 823(2), Nov. 30, 1993, 107 Stat. 1707]

§ 4532. Factories and arsenals: manufacture at; abolition of

(a) The Secretary of the Army shall have supplies needed for the Department of the Army made in factories or arsenals owned by the United States, so far as those factories or arsenals can make those supplies on an economical basis.

(b) The Secretary may abolish any United States arsenal that he considers unnecessary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 254.)

[§§ 4533 to 4535. Repealed. P.L. 103–160, § 823(3)–(5), Nov. 30, 1993, 107 Stat. 1707]

§ 4536. Equipment: post bakeries, schools, kitchens, and mess halls

Money necessary for the following items for the use of enlisted members of the Army may be spent from appropriations for regular supplies:

(1) Equipment for post bakeries.

(2) Furniture, textbooks, paper, and equipment for post schools.

(3) Tableware and mess furniture for kitchens and mess halls.

(Aug. 10, 1956, ch. 1041, 70A Stat. 254.)

[§§ 4537, 4538. Repealed. P.L. 103–160, § 823(6), (7), Nov. 30, 1993, 107 Stat. 1706]

[§ 4539. Repealed. P.L. 91–482, § 1(a), Oct. 21, 1970, 84 Stat. 1082]

§ 4540. Architectural and engineering services

(a) Whenever he considers that it is advantageous to the national defense and that existing facilities of the Department of the

Army are inadequate, the Secretary of the Army may, by contract or otherwise, employ the architectural or engineering services of any person outside that Department for producing and delivering designs, plans, drawings, and specifications needed for any public works or utilities project of the Department.

(b) The fee for any service under this section may not be more than 6 percent of the estimated cost, as determined by the Secretary, of the project to which it applies.

(c) Sections 305, 3324, and 7204, chapter 51, and subchapters III, IV, and VI of chapter 53 of title 5 do not apply to employment under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 255; Nov. 2, 1966, P.L. 89–718, § 28, 80 Stat. 1119; Oct. 13, 1978, P.L. 95–454, § 703(c)(3), § 801(a)(3)(I), 92 Stat. 1217, 1222; Dec. 12, 1980, P.L. 96–513, § 512(16), 94 Stat. 2930.)

§ 4541. Army arsenals: treatment of unutilized or underutilized plant-capacity costs

(a) ESTIMATE OF COSTS.—The Secretary of the Army shall include in the budget justification documents submitted to Congress in support of the President's budget for a fiscal year submitted under section 1105 of title 31 an estimate of the funds to be required in that fiscal year to cover unutilized and underutilized plant-capacity costs at Army arsenals.

(b) USE OF FUNDS.—Funds appropriated to the Secretary of the Army for a fiscal year to cover unutilized and underutilized plant-capacity costs at Army arsenals shall be used in such fiscal year only for such costs.

(c) TREATMENT OF COSTS.—(1) The Secretary of the Army shall not include unutilized and underutilized plant-capacity costs when evaluating the bid of an Army arsenal for purposes of the arsenal's contracting to provide a good or service to a Government agency.

(2) When an Army arsenal is serving as a subcontractor to a private-sector entity with respect to a good or service to be provided to a Government agency, the cost charged by the arsenal shall not include unutilized and underutilized plant-capacity costs that are funded by a direct appropriation.

(d) DEFINITIONS.—In this section:

(1) The term "Army arsenal" means a Government-owned, Government-operated defense plant of the Department of the Army that manufactures weapons, weapon components, or both.

(2) The term "unutilized and underutilized plant-capacity costs" means the costs associated with operating and maintaining the facilities and equipment of an Army arsenal that the Secretary of the Army determines are required to be kept for mobilization needs, in those months in which the facilities and equipment are not used or are used only 20 percent or less of available work days.

(Added P.L. 106–398, § 1[342(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–64.)

§ 4542. Technical data packages for large-caliber cannon: prohibition on transfers to foreign countries; exception

(a) GENERAL RULE.—Funds appropriated to the Department of Defense may not be used—

(1) to transfer to a foreign country a technical data package for a defense item being manufactured or developed in an arsenal; or

(2) to assist a foreign country in producing such a defense item.

(b) EXCEPTION.—The Secretary of the Army may use funds appropriated to the Department of Defense to transfer a technical data package, or to provide assistance, described in subsection (a) if—

(1) the transfer or provision of assistance is to a friendly foreign country (as determined by the Secretary of Defense in consultation with the Secretary of State);

(2) the Secretary of the Army determines that such action—

(A) would have a clear benefit to the preservation of the production base for the production of cannon at the arsenal concerned; and

(B) would not transfer technology (including production techniques) considered unique to the arsenal concerned, except as provided in subsection (e); and

(3) the Secretary of Defense enters into an agreement with the country concerned described in subsection (c) or (d).

(c) COPRODUCTION AGREEMENTS.—An agreement under this subsection shall be in the form of a Government-to-Government Memorandum of Understanding and shall include provisions that—

(1) prescribe the content of the technical data package or assistance to be transferred to the foreign country participating in the agreement;

(2) require that production by the participating foreign country of the defense item to which the technical data package or assistance relates be shared with the arsenal concerned;

(3) subject to such exceptions as may be approved under subsection (f), prohibit transfer by the participating foreign country to a third party or country of—

(A) any defense article, technical data package, technology, or assistance provided by the United States under the agreement; and

(B) any defense article produced by the participating foreign country under the agreement; and

(4) require the Secretary of Defense to monitor compliance with the agreement and the participating foreign country to report periodically to the Secretary of Defense concerning the agreement.

(d) COOPERATIVE PROJECT AGREEMENTS.—An agreement under this subsection is a cooperative project agreement under section 27 of the Arms Export Control Act (22 U.S.C. 2767) which includes provisions that—

(1) for development phases describe the technical data to be transferred and for the production phase prescribe the content of the technical data package or assistance to be transferred to the foreign country participating in the agreement;

(2) require that at least the United States production of the defense item to which the technical data package or assistance relates be carried out by the arsenal concerned; and

(3) require the Secretary of Defense to monitor compliance with the agreement.

(e) LICENSING FEES AND ROYALTIES.—The limitation in subsection (b)(2)(B) shall not apply if the technology (or production technique) transferred is subject to nonexclusive license and payment of any negotiated licensing fee or royalty that reflects the cost of development, implementation, and prove-out of the technology or production technique. Any negotiated license fee or royalty shall be placed in the operating fund of the arsenal concerned for the purpose of capital investment and technology development at that arsenal.

(f) TRANSFERS TO THIRD PARTIES.—A transfer described in subsection (c)(3) may be made if—

(1) the defense article, technical data package, or technology to be transferred is a product of a cooperative research and development program or a cooperative project in which the United States and the participating foreign country were partners; or

(2) the President—

(A) complies with all requirements of section 3(d) of the Arms Export Control Act (22 U.S.C. 2753(d)) with respect to such transfer; and

(B) certifies to Congress, before the transfer, that the transfer would provide a clear benefit to the production base of the United States for large-caliber cannon.

(g) NOTICE AND REPORTS TO CONGRESS.—(1) The Secretary of the Army shall submit to Congress a notice of each agreement entered into under this section.

(2) The Secretary shall submit to Congress a semiannual report on the operation of this section and of agreements entered into under this section.

(h) ARSENAL DEFINED.—In this section, the term "arsenal" means a Government-owned, Government-operated defense plant that manufactures large-caliber cannon.

(Added by identical amendments P.L. 99–500, 99–591, 99–661, § 101(c) [§ 9036(b)], § 101(c) [§ 9036(b)], § 1203(a), Oct. 18, 1986, Oct. 30, 1986, Nov. 14, 1986, 100 Stat. 1783–107, 3341–107, 3968; amended P.L. 101–189, § 806, Nov. 29, 1989, 103 Stat. 1489; P.L. 102–190, § 1061(a)(24), Dec. 5, 1991, 105 Stat. 1473.)

§ 4543. Army industrial facilities: sales of manufactured articles or services outside Department of Defense

(a) AUTHORITY TO SELL OUTSIDE DOD.—Regulations under section 2208(h) of this title shall authorize 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 to sell manufactured articles or services to a person outside the Department of Defense if—

(1) in the case of an article, the article is sold to a United States manufacturer, assembler, developer, or other concern—

(A) for use in developing new products;

(B) for incorporation into items to be sold to, or to be used in a contract with, an agency of the United States;

(C) for incorporation into items to be sold to, or to be used in a contract with, or to be used for purposes of soliciting a contract with, a friendly foreign government; or

(D) for use in commercial products;

(2) in the case of an article, the purchaser is determined by the Department of Defense to be qualified to carry out the proposed work involving the article to be purchased;

(3) the sale is to be made on a basis that does not interfere with performance of work by the facility for the Department of Defense or for a contractor of the Department of Defense;

(4) in the case of services, the services are related to an article authorized to be sold under this section and are to be performed in the United States for the purchaser;

(5) the Secretary of the Army determines that the articles or services are not available from a commercial source located in the United States;

(6) the purchaser of an article or service agrees to hold harmless and indemnify the United States, except in a case of willful misconduct or gross negligence, from any claim for damages or injury to any person or property arising out of the article or service;

(7) the article to be sold can be manufactured, or the service to be sold can be substantially performed, by the industrial facility with only incidental subcontracting;

(8) it is in the public interest to manufacture such article or perform such service; and

(9) the sale will not interfere with performance of the military mission of the industrial facility.

(b) ADDITIONAL REQUIREMENTS.—The regulations shall also—

(1) require that the authority to sell articles or services under the regulations be exercised at the level of the commander of the major subordinate command of the Army with responsibility over the facility concerned;

(2) authorize a purchaser of articles or services to use advance incremental funding to pay for the articles or services; and

(3) in the case of a sale of commercial articles or commercial services in accordance with subsection (a) by a facility that manufactures large caliber cannons, gun mounts, or recoil mechanisms, or components thereof, authorize such facility—

(A) to charge the buyer, at a minimum, the variable costs that are associated with the commercial articles or commercial services sold;

(B) to enter into a firm, fixed-price contract or, if agreed by the buyer, a cost reimbursement contract for the sale; and

(C) to 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 commercial articles or commercial services sold.

(c) 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.

(d) DEFINITIONS.—In this section:

(1) The term "commercial article" means an article that is usable for a nondefense purpose.

(2) The term "commercial service" means a service that is usable for a nondefense purpose.

(3) 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 production 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.

(4) 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 P.L. 103–160, § 158(a)(1), Nov. 30, 1993, 107 Stat. 1581; amended P.L. 103–337, § 141, Oct. 5, 1994, 108 Stat. 2688.)

CHAPTER 434—ARMAMENTS INDUSTRIAL BASE

Sec.
4551. Definitions.
4552. Policy.
4553. Armament Retooling and Manufacturing Support Initiative.
4554. Property management contracts and leases.
4555. ARMS Initiative loan guarantee program.

§ 4551. Definitions

In this chapter:

(1) The term "ARMS Initiative" means the Armament Retooling and Manufacturing Support Initiative authorized by this chapter.

(2) The term "eligible facility" means a Government-owned, contractor-operated ammunition manufacturing facility of the Department of the Army that is in an active, inactive, layaway, or caretaker status.

(3) The term "property manager" includes any person or entity managing an eligible facility made available under the ARMS Initiative through a property management contract.

(4) The term "property management contract" includes facility use contracts, site management contracts, leases, and other agreements entered into under the authority of this chapter.

(5) The term "Secretary" means the Secretary of the Army.

(Added P.L. 106–398, § 1[344(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–67.)

§ 4552. Policy

It is the policy of the United States—

(1) to encourage, to the maximum extent practicable, commercial firms to use Government-owned, contractor-operated ammunition manufacturing facilities of the Department of the Army;

(2) to use such facilities for supporting programs, projects, policies, and initiatives that promote competition in the private sector of the United States economy and that advance United States interests in the global marketplace;

(3) to increase the manufacture of products inside the United States;

(4) to support policies and programs that provide manufacturers with incentives to assist the United States in making more efficient and economical use of eligible facilities for commercial purposes;

(5) to provide, as appropriate, small businesses (including socially and economically disadvantaged small business concerns and new small businesses) with incentives that encourage those businesses to undertake manufacturing and other

industrial processing activities that contribute to the prosperity of the United States;

(6) to encourage the creation of jobs through increased investment in the private sector of the United States economy;

(7) to foster a more efficient, cost-effective, and adaptable armaments industry in the United States;

(8) to achieve, with respect to armaments manufacturing capacity, an optimum level of readiness of the national technology and industrial base within the United States that is consistent with the projected threats to the national security of the United States and the projected emergency requirements of the armed forces; and

(9) to encourage facility use contracting where feasible.

(Added P.L. 106–398, § 1[344(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–67.)

§ 4553. Armament Retooling and Manufacturing Support Initiative

(a) AUTHORITY FOR INITIATIVE.—The Secretary may carry out a program to be known as the "Armament Retooling and Manufacturing Support Initiative".

(b) PURPOSES.—The purposes of the ARMS Initiative are as follows:

(1) To encourage commercial firms, to the maximum extent practicable, to use eligible facilities for commercial purposes.

(2) To increase the opportunities for small businesses (including socially and economically disadvantaged small business concerns and new small businesses) to use eligible facilities for those purposes.

(3) To maintain in the United States a work force having the skills in manufacturing processes that are necessary to meet industrial emergency planned requirements for national security purposes.

(4) To demonstrate innovative business practices, to support Department of Defense acquisition reform, and to serve as both a model and a laboratory for future defense conversion initiatives of the Department of Defense.

(5) To the maximum extent practicable, to allow the operation of eligible facilities to be rapidly responsive to the forces of free market competition.

(6) To reduce or eliminate the cost of Government ownership of eligible facilities, including the costs of operations and maintenance, the costs of environmental remediation, and other costs.

(7) To reduce the cost of products of the Department of Defense produced at eligible facilities.

(8) To leverage private investment at eligible facilities through long-term facility use contracts, property management contracts, leases, or other agreements that support and advance the policies and purposes of this chapter, for the following activities:

(A) Recapitalization of plant and equipment.

(B) Environmental remediation.

(C) Promotion of commercial business ventures.

(D) Other activities approved by the Secretary.

(9) To foster cooperation between the Department of the Army, property managers, commercial interests, and State and local agencies in the implementation of sustainable development strategies and investment in eligible facilities made available for purposes of the ARMS Initiative.

(10) To reduce or eliminate the cost of asset disposal that would be incurred if property at an eligible facility was declared excess to the needs of the Department of the Army.

(c) AVAILABILITY OF FACILITIES.—The Secretary may make any eligible facility available for the purposes of the ARMS Initiative.

(d) CONSIDERATION FOR LEASES.—Section 321 of the Act of June 30, 1932 (40 U.S.C. 303b), shall not apply to uses of property or facilities in accordance with the ARMS Initiative.

(e) PROGRAM SUPPORT.—(1) Funds appropriated for purposes of the ARMS Initiative may be used for administrative support and management.

(2) A full annual accounting of such expenses for each fiscal year shall be provided 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 not later than March 30 of the following fiscal year.

(Added P.L. 106–398, § 1[344(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–68.)

§ 4554. Property management contracts and leases

(a) IN GENERAL.—In the case of each eligible facility that is made available for the ARMS Initiative, the Secretary—

(1) shall make full use of facility use contracts, leases, and other such commercial contractual instruments as may be appropriate;

(2) shall evaluate, on the basis of efficiency, cost, emergency mobilization requirements, and the goals and purposes of the ARMS Initiative, the procurement of services from the property manager, including maintenance, operation, modification, infrastructure, environmental restoration and remediation, and disposal of ammunition manufacturing assets, and other services; and

(3) may, in carrying out paragraphs (1) and (2)—

(A) enter into contracts, and provide for subcontracts, for terms up to 25 years, as the Secretary considers appropriate and consistent with the needs of the Department of the Army and the goals and purposes of the ARMS Initiative; and

(B) use procedures that are authorized to be used under section 2304(c)(5) of this title when the contractor or subcontractor is a source specified in law.

(b) CONSIDERATION FOR USE.—(1) To the extent provided in a contract entered into under this section for the use of property at an eligible facility that is accountable under the contract, the Secretary may accept consideration for such use that is, in whole or in part, in a form other than—

(A) rental payments; or

(B) revenue generated at the facility.

(2) Forms of consideration acceptable under paragraph (1) for a use of an eligible facility or any property at an eligible facility include the following:

(A) The improvement, maintenance, protection, repair, and restoration of the facility, the property, or any property within the boundaries of the installation where the facility is located.

(B) Reductions in overhead costs.

(C) Reductions in product cost.

(3) The authority under paragraph (1) may be exercised without regard to section 3302(b) of title 31 and any other provision of law.

(Added P.L. 106–398, § 1[344(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–69.)

§ 4555. ARMS Initiative loan guarantee program

(a) PROGRAM AUTHORIZED.—Subject to subsection (b), the Secretary may carry out a loan guarantee program to encourage commercial firms to use eligible facilities under this chapter. Under any such program, the Secretary may guarantee the repayment of any loan made to a commercial firm to fund, in whole or in part, the establishment of a commercial activity to use an eligible facility under this chapter.

(b) ADVANCED BUDGET AUTHORITY.—Loan guarantees under this section may not be committed except to the extent that appropriations of budget authority to cover their costs are made in advance, as required by section 504 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661c).

(c) PROGRAM ADMINISTRATION.—(1) The Secretary may enter into an agreement with any of the officials named in paragraph (2) under which that official may, for the purposes of this section—

(A) process applications for loan guarantees;

(B) guarantee repayment of loans; and

(C) provide any other services to the Secretary to administer the loan guarantee program.

(2) The officials referred to in paragraph (1) are as follows:

(A) The Administrator of the Small Business Administration.

(B) The head of any appropriate agency in the Department of Agriculture, including—

(i) the Administrator of the Farmers Home Administration; and

(ii) the Administrator of the Rural Development Administration.

(3) Each official authorized to do so under an agreement entered into under paragraph (1) may guarantee loans under this section to commercial firms of any size, notwithstanding any limitations on the size of applicants imposed on other loan guarantee programs that the official administers.

(4) To the extent practicable, each official processing loan guarantee applications under this section pursuant to an agreement entered into under paragraph (1) shall use the same processing procedures as the official uses for processing loan guarantee applications under other loan guarantee programs that the official administers.

(d) LOAN LIMITS.—The maximum amount of loan principal guaranteed during a fiscal year under this section may not exceed—

(1) $20,000,000, with respect to any single borrower; and

(2) $320,000,000 with respect to all borrowers.

(e) TRANSFER OF FUNDS.—The Secretary may transfer to an official providing services under subsection (c), and that official may accept, such funds as may be necessary to administer the loan guarantee program under this section.

(Added P.L. 106–398, § 1[344(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–70.)

CHAPTER 435—ISSUE OF SERVICEABLE MATERIAL TO ARMED FORCES

Sec.
4561. Rations.
4562. Clothing.
4563. Clothing: replacement when destroyed to prevent contagion.
4564. Navy and Marine Corps: camp equipment and transportation; when on shore duty with Army.
4565. Colors, standards, and guidons of demobilized organizations: disposition.

§ 4561. Rations

(a) The President may prescribe the components, and the quantities thereof, of the Army ration. He may direct the issue of equivalent articles in place of the prescribed components whenever, in his opinion, economy and the health and comfort of the members of the Army so require.

(b) Under the direction of the Secretary of the Army, the branch, office, or officer designated by him shall issue the components of the Army ration.

(c) An enlisted member of the Army on active duty is entitled to one ration daily. The emergency ration, when issued, is in addition to the regular ration.

(d) Fresh or preserved fruits, milk, butter, and eggs necessary for the proper diet of the sick in hospitals shall be provided under regulations prescribed by the Surgeon General and approved by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 255.)

§ 4562. Clothing

The President may prescribe the quantity and kind of clothing to be issued annually to members of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 256.)

§ 4563. Clothing: replacement when destroyed to prevent contagion

Upon the recommendation of the Surgeon General, the Secretary of the Army may order a gratuitous issue of clothing to any enlisted member of the Army who has had a contagious disease, and to any hospital attendant who attended him while he had that disease, to replace clothing destroyed by order of an officer of the Medical Corps to prevent contagion.

(Aug. 10, 1956, ch. 1041, 70A Stat. 256.)

§ 4564. Navy and Marine Corps: camp equipment and transportation; when on shore duty with Army

While any detachment of the Navy or Marine Corps is on shore duty in cooperation with troops of the Army, the officer of the Army designated by the Secretary of the Army shall, upon the requisition of the officer of the Navy or Marine Corps in command of the detachment, issue rations and camp equipment, and furnish transportation, to that detachment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 256.)

§ 4565. Colors, standards, and guidons of demobilized organizations: disposition

(a) The Secretary of the Army may dispose of colors, standards, and guidons of demobilized organizations of the Army, as follows:

(1) Those brought into Federal service by the Army National Guard of a State may be returned to that State upon the request of its governor.

(2) Those that cannot be returned under clause (1) may, upon the request of its governor, be sent to the State that, as determined by the Secretary, furnished the majority of members of the organization when it was formed.

Those that cannot be returned or sent under clause (1) or (2) of this subsection shall be delivered to the Secretary for such national use as the Secretary may direct.

(b) Title to colors, standards, and guidons of demobilized organizations of the Army remains in the United States.

(c) No color, standard, or guidon may be disposed of under this section unless provision satisfactory to the Secretary has been made for its preservation and care.

(Aug. 10, 1956, ch. 1041, 70A Stat. 256; Nov. 2, 1966, P.L. 89–718, § 29, 80 Stat. 1119.)

CHAPTER 437—UTILITIES AND SERVICES

Sec.
4591. Utilities: proceeds from overseas operations.
4592. Radiograms and telegrams: forwarding charges due connecting commercial facilities.
4593. Quarters: heat and light.
4594. Furnishing of heraldic services.
4595. Army Military History Institute: fee for providing historical information to the public.

§ 4591. Utilities: proceeds from overseas operations

During actual or threatened hostilities, proceeds from operating a public utility in connection with operations of the Corps of Engineers in the field overseas are available for that utility until the close of the fiscal year following that in which they are received.

(Aug. 10, 1956, ch. 1041, 70A Stat. 257.)

§ 4592. Radiograms and telegrams: forwarding charges due connecting commercial facilities

In the operation of telegraph lines, cables, or radio stations, members of the Signal Corps may, in the discretion of the Secretary of the Army, collect forwarding charges due connecting commercial telegraph or radio companies for sending radiograms or telegrams over their lines. Under such regulations as the Secretary may prescribe, they may present a voucher to a disbursing official for payment of the forwarding charge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 578; Sept. 13, 1982, P.L. 97–258, § 2(b)(1)(A), 96 Stat. 1052; Oct. 19, 1996, P.L. 104–316, § 105(e), 110 Stat. 3830.)

§ 4593. Quarters: heat and light

The heat and light necessary for the authorized quarters of members of the Army shall be furnished at the expense of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 257.)

§ 4594. Furnishing of heraldic services

(a) Under regulations to be prescribed by the Secretary of the Army, an authority designated by him may, upon the request of, and subject to approval by, the Secretary of another military department, design flags, insignia, badges, medals, seals, decorations, guidons, streamers, finial pieces for flagstaffs, buttons, buckles, awards, trophies, marks, emblems, rosettes, scrolls, braids, ribbons, knots, tabs, cords, and similar items for the requesting department.

(b) Upon request the Secretary of the Army may advise other departments and agencies of the United States on matters of heraldry.

(c) The Secretary of the Army may prescribe regulations providing for reimbursement for services furnished under this section.

(Added P.L. 85–263, § 1(1), Sept. 2, 1957, 71 Stat. 589.)

§ 4595. Army Military History Institute: fee for providing historical information to the public

(a) AUTHORITY.—Except as provided in subsection (b), the Secretary of the Army may charge a person a fee for providing the person with information from the United States Army Military History Institute that is requested by that person.

(b) EXCEPTIONS.—A fee may not be charged under this section—

(1) to a person for information that the person requests to carry out a duty as a member of the armed forces or an officer or employee of the United States; or

(2) for a release of information under section 552 of title 5.

(c) LIMITATION ON AMOUNT.—A fee charged for providing information under this section may not exceed the cost of providing the information.

(d) RETENTION OF FEES.—Amounts received under subsection (a) for providing information in any fiscal year shall be credited to the appropriation or appropriations charged the costs of providing information to the public from the United States Army Military History Institute during that fiscal year.

(e) DEFINITIONS.—In this section:

(1) The term "United States Army Military History Institute" means the archive for historical records and materials of the Army that the Secretary of the Army designates as the primary archive for such records and materials.

(2) The terms "officer of the United States" and "employee of the United States" have the meanings given the terms "officer" and "employee", respectively, in sections 2104 and 2105, respectively, of title 5.

(Added P.L. 106–398, § 1[1085(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–287.)

CHAPTER 439—SALE OF SERVICEABLE MATERIAL

Sec.
4621. Quartermaster supplies: members of armed forces; veterans; executive or military departments and employees; prices.
4622. Rations: commissioned officers in field.
[4623. Repealed.]
4624. Medical supplies: civilian employees of the Army; American National Red Cross; Armed Forces Retirement Home.
4625. Ordnance property: officers of armed forces; civilian employees of Army; American National Red Cross; educational institutions; homes for veterans' orphans.
4626. Aircraft supplies and services: foreign military or air attaché.
4627. Supplies: educational institutions.
4628. Airplane parts and accessories: civilian flying schools.
4629. Proceeds: disposition.

§ 4621. Quartermaster supplies: members of armed forces; veterans; executive or military departments and employees; prices

(a) The Secretary of the Army shall procure and sell, for cash or credit—

(1) articles specified by the Secretary of the Army or a person designated by him, to members of the Army; and

(2) items of individual clothing and equipment, to officers of the Army, under such restrictions as the Secretary may proscribe.

An account of sales on credit shall be kept and the amount due reported to any branch, office, or officer designated by the Secretary. Except for articles and items acquired through the use of working capital funds under section 2208 of this title, sales of articles shall be at cost, and sales of individual clothing and equipment shall be at average current prices, including overhead, as determined by the Secretary.

(b) The Secretary shall sell subsistence supplies to members of other armed forces at the prices at which like property is sold to members of the Army.

(c) The Secretary may sell serviceable quartermaster property, other than subsistence supplies, to an officer of another armed force for his use in the service, in the same manner as these articles are sold to an officer of the Army.

(d) A person who has been discharged honorably or under honorable conditions from the Army, Navy, Air Force, or Marine Corps and who is receiving care and medical treatment from the Public Health Service or the Department of Veterans Affairs may buy subsistence supplies and other supplies, except articles of uniform, at the prices at which like property is sold to a member of the Army.

(e) Under such conditions as the Secretary may prescribe, exterior articles of uniform may be sold to a person who has been discharged from the Army honorably or under honorable conditions, at

the prices at which like articles are sold to members of the Army. This subsection does not modify section 772 or 773 of this title.

(f) Whenever, under regulations to be prescribed by the Secretary, subsistence supplies are furnished to any branch of the Army or sold to employees of any executive department other than the Department of Defense, payment shall be made in cash or by commercial credit.

(g) The Secretary may, by regulation, provide for the procurement and sale of stores designated by him to such civilian officers and employees of the United States, and such other persons, as he considers proper—

(1) at military installations outside the United States; and

(2) at military installations inside the United States where he determines that it is impracticable for those civilian officers, employees, and persons to obtain those stores from private agencies without impairing the efficient operation of military activities.

However, sales to officers and employees inside the United States may be made only to those residing within military installations.

(h) Appropriations for subsistence of the Army may be applied to the purchase of subsistence supplies for sale to members of the Army on active duty for the use of themselves and their families.

(Aug. 10, 1956, ch. 1041, 70A Stat. 257; Sept. 7, 1962, P.L. 87–651, § 118, 76 Stat. 513; Dec. 12, 1980, P.L. 96–513, § 512(17), 94 Stat. 2930; Dec. 4, 1987, P.L. 100–180, § 313(c), 101 Stat. 1074; Nov. 29, 1989, P.L. 101–189, § 1621(a)(1), 103 Stat. 1602; Feb. 10, 1996, P.L. 104–106, § 375(b)(1), 110 Stat. 282.)

§ 4622. Rations: commissioned officers in field

Commissioned officers of the Army serving in the field may buy rations for their own use, on credit, from any officer designated by the Secretary of the Army. Amounts due for these purchases shall be reported monthly to the officer of the Army designated by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 258.)

[§ 4623. Repealed. P.L. 91–482, § 1(a), Oct. 21, 1970, 84 Stat. 1082]

§ 4624. Medical supplies: civilian employees of the Army; American National Red Cross; Armed Forces Retirement Home

(a) Under regulations to be prescribed by the Secretary of the Army, a civilian employee of the Department of the Army who is stationed at an Army post may buy necessary medical supplies from the Army when they are prescribed by an officer of the Medical Corps on active duty.

(b) With the approval of the Secretary, the Army Medical Department may sell medical supplies to the American National Red Cross for cash.

(c) Any branch, office, or officer designated by the Secretary may sell medical and hospital supplies to the Armed Forces Retirement Home.

(Aug. 10, 1956, ch. 1041, 70A Stat. 259; June 4, 1968, P.L. 90–329, 82 Stat. 170; Dec. 12, 1980, P.L. 96–513, § 512(18)(A), (B), 94 Stat. 2930; Nov. 5, 1990, P.L. 101–510, § 1533(a)(5), 104 Stat. 1734.)

§ 4625. Ordnance property: officers of armed forces; civilian employees of Army; American National Red Cross; educational institutions; homes for veterans' orphans

(a) Any branch, office, or officer designated by the Secretary of the Army may sell articles of ordnance property to officers of other armed forces for their use in the service, in the same manner as those articles are sold to officers of the Army.

(b) Under such regulations as the Secretary may prescribe, ordnance stores may be sold to civilian employees of the Army and to the American National Red Cross.

(c) Articles of ordnance property may be sold to educational institutions and to State soldiers' and sailors' orphans' homes for maintaining the ordnance and ordnance stores issued to those institutions and homes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 259.)

§ 4626. Aircraft supplies and services: foreign military or air attaché

Under such conditions as he may prescribe, the Secretary of the Army may provide for the sale of fuel, oil, and other supplies for use in aircraft operated by a foreign military or air attaché accredited to the United States, and for the furnishing of mechanical service and other assistance to such aircraft. Shelter may be furnished to such aircraft, but only without charge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 259.)

§ 4627. Supplies: educational institutions

Under such regulations as the Secretary of the Army may prescribe, supplies and military publications procured for the Army may be sold to any educational institution to which an officer of the Army is detailed as professor of military science and tactics, for the use of its military students. Sales under this section shall be for cash.

(Aug. 10, 1956, ch. 1041, 70A Stat. 259.)

§ 4628. Airplane parts and accessories: civilian flying schools

The Secretary of the Army may sell, to civilian flying schools at which personnel of the Department of the Army or the Department of the Air Force are receiving flight training under contracts requiring these schools to maintain and repair airplanes of the Army furnished to them for flight training, the spare parts and accessories needed for those repairs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 259.)

§ 4629. Proceeds: disposition

The proceeds of sales of the following shall be paid into the Treasury to the credit of the appropriation out of which they were purchased, and are available for the purposes of that appropriation:

(1) Exterior articles of uniform sold under section 4621 of this title.

(2) Supplies and military publications sold to educational institutions under section 4627 of this title.

(3) Fuel, oil, other supplies, and services for aircraft of a foreign military or air attache sold under section 4626 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 260.)

CHAPTER 441—ISSUE OF SERVICEABLE MATERIAL OTHER THAN TO ARMED FORCES

Sec.
4651. Arms, tentage, and equipment: educational institutions not maintaining units of R.O.T.C.
4652. Rifles and ammunition for target practice: educational institutions having corps of cadets.
4653. Ordnance and ordnance stores: District of Columbia high schools.
4654. Quartermaster supplies: military instruction camps.
4655. Arms and ammunition: agencies and departments of the United States.
4656. Aircraft and equipment: civilian aviation schools.
4657. Sale of ammunition for avalanche-control purposes.

§ 4651. Arms, tentage, and equipment: educational institutions not maintaining units of R.O.T.C.

Under such conditions as he may prescribe, the Secretary of the Army may issue arms, tentage, and equipment that he considers necessary for proper military training, to any educational institution at which no unit of the Reserve Officers' Training Corps is maintained, but which has a course in military training prescribed by the Secretary and which has at least 100 physically fit students over 14 years of age.

(Aug. 10, 1956, ch. 1041, 70A Stat. 260; Nov. 8, 1985, P.L. 99–145, § 1301(b)(3)(C), 99 Stat. 736.)

§ 4652. Rifles and ammunition for target practice: educational institutions having corps of cadets

(a) The Secretary of the Army may lend, without expense to the United States, magazine rifles and appendages that are not of the existing service models in use at the time and that are not necessary for a proper reserve supply, to any educational institution having a uniformed corps of cadets of sufficient number for target practice. He may also issue 40 rounds of ball cartridges for each cadet for each range at which target practice is held, but not more than 120 rounds each year for each cadet participating in target practice.

(b) The institutions to which property is lent under subsection (a) shall use it for target practice, take proper care of it and return it when required.

(c) The Secretary shall prescribe regulations to carry out this section, containing such other requirements as he considers necessary to safeguard the interests of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 260.)

§ 4653. Ordnance and ordnance stores: District of Columbia high schools

The Secretary of the Army, under regulations to be prescribed by him, may issue to the high schools of the District of Columbia ordnance and ordnance stores required for military instruction and practice. 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, except for property properly expended, for its return when required.

(Aug. 10, 1956, ch. 1041, 70A Stat. 261.)

§ 4654. Quartermaster supplies: military instruction camps

Under such conditions as he may prescribe, the Secretary of the Army may issue, to any educational institution at which an Army officer is detailed as professor of military science and tactics, such quartermaster supplies as are necessary to establish and maintain a camp for the military instruction of its students. The Secretary shall require a bond in the value of the property issued under this section, for the care and safekeeping of that property and except for property properly expended, for its return when required.

(Aug. 10, 1956, ch. 1041, 70A Stat. 261.)

§ 4655. Arms and ammunition: agencies and departments of the United States

(a) Whenever required for the protection of public money and property, the Secretary of the Army may lend arms and their accouterments, and issue ammunition, to a department or independent agency of the United States, upon request of its head. Property lent or issued under this subsection may be delivered to an officer of the department or agency designated by the head thereof, and that officer shall account for the property to the Secretary of the Army. Property lent or issued under this subsection and not properly expended shall be returned when it is no longer needed.

(b) The department or agency to which property is lent or issued under subsection (a) shall transfer funds to the credit of the Department of the Army to cover the costs of—

(1) ammunition issued;

(2) replacing arms and accouterments that have been lost or destroyed, or cannot be repaired;

(3) repairing arms and accouterments returned to the Department of the Army; and

(4) making and receiving shipments by the Department of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 261.)

§ 4656. Aircraft and equipment: civilian aviation schools

The Secretary of the Army, under regulations to be prescribed by him, may lend aircraft, aircraft parts, and aeronautical equipment and accessories that are required for instruction, training, and maintenance, to accredited civilian aviation schools at which personnel of the Department of the Army or the Department of the Air Force are pursuing a course of instruction and training under detail by competent orders.

(Aug. 10, 1956, ch. 1041, 70A Stat. 261; Oct. 12, 1982, P.L. 97–295, § 1(42), 96 Stat. 1298.)

§ 4657. Sale of ammunition for avalanche-control purposes

Subject to the needs of the Army, the Secretary of the Army may sell ammunition for military weapons which are used for avalanche-control purposes to any State (or entity of a State) or to any other non-Federal entity that has been authorized by a State to use those weapons in that State for avalanche-control purposes. Sales of ammunition under this section shall be on a reimbursable basis and shall be subject to the condition that the ammunition be used only for avalanche-control purposes.

(Added P.L. 98–525, § 1538, Oct. 19, 1984, 98 Stat. 2636.)

CHAPTER 443—DISPOSAL OF OBSOLETE OR SURPLUS MATERIAL

Sec.
4681. Surplus war material: sale to States and foreign governments.
4682. Obsolete or excess material: sale to National Council of Boy Scouts of America.
4683. Excess M–1 rifles: loan or donation for funeral and other ceremonial purposes.
4684. Surplus obsolete ordnance: sale to patriotic organizations.
4685. Obsolete ordnance: loan to educational institutions and State soldiers and sailors' orphans' homes.
4686. Obsolete ordnance: gift to State homes for soldiers and sailors.
4687. Sale of excess, obsolete, or unserviceable ammunition and ammunition components.
4688. Armor-piercing ammunition and components: condition on disposal.

§ 4681. Surplus war material: sale to States and foreign governments

Subject to regulations under section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486), the Secretary of the Army may sell surplus war material and supplies, except food, of the Department of the Army, for which there is no adequate domestic market, to any State or to any foreign government with which the United States was at peace on June 5, 1920. Sales under this section shall be made upon terms that the Secretary considers expedient.

(Aug. 10, 1956, ch. 1041, 70A Stat. 262; Dec. 12, 1980, P.L. 96–513, § 512(19), 94 Stat. 2930.)

§ 4682. Obsolete or excess material: sale to National Council of Boy Scouts of America

Subject to regulations under section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486), the Secretary of the Army, under such conditions as he may prescribe, may sell obsolete or excess material to the National Council of the Boy Scouts of America. Sales under this section shall be at fair value to the Department of the Army, including packing, handling, and transportation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 262; Dec. 12, 1980, P.L. 96–513, § 512(19), 94 Stat. 2930.)

§ 4683. Excess M–1 rifles: loan or donation for funeral and other ceremonial purposes [1]

(a) AUTHORITY TO LEND OR DONATE.—(1) The Secretary of the Army, under regulations prescribed by the Secretary, may conditionally lend or donate excess M–1 rifles (not more than 15), slings,

[1] Section 381(e) of the National Defense Authorization Act for Fiscal Year 2000 (P.L. 106–65; 113 Stat. 583) provides:

(e) REPORT ON IMPLEMENTATION.—Not later than two years after [Oct. 5, 1999], the Comptroller General shall review the exercise of authority under section 4683 of title 10, United States Code, as amended by this section, and submit to Congress a report on the findings resulting from the review.

and cartridge belts to any eligible organization for use by that organization for funeral ceremonies of a member or former member of the armed forces, and for other ceremonial purposes.

(2) If the rifles to be loaned or donated under paragraph (1) are to be used by the eligible organization for funeral ceremonies of a member or former member of the armed forces, the Secretary may issue and deliver the rifles, together with the necessary accoutrements and blank ammunition, without charge.

(b) RELIEF FROM LIABILITY.—The Secretary may relieve an eligible organization to which materials are lent or donated under subsection (a), and the surety on its bond, from liability for loss or destruction of the material lent or donated, if there is conclusive evidence that the loss or destruction did not result from negligence.

(c) CONDITIONS ON LOAN OR DONATION.—In lending or donating rifles under subsection (a), the Secretary shall impose such conditions on the use of the rifles as may be necessary to ensure security, safety, and accountability. The Secretary may impose such other conditions as the Secretary considers appropriate.

(d) ELIGIBLE ORGANIZATION DEFINED.—In this section, the term "eligible organization" means—

(1) a unit or other organization of honor guards recognized by the Secretary of the Army as honor guards for a national cemetery;

(2) a law enforcement agency; or

(3) a local unit of any organization that, as determined by the Secretary of the Army, is a nationally recognized veterans' organization.

(Aug. 10, 1956, ch. 1041, 70A Stat. 262; Nov. 29, 1989, amended P.L. 101–189, § 381(a)–(d)(1), 103 Stat. 1602; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 582.)

§ 4684. Surplus obsolete ordnance: sale to patriotic organizations

Subject to regulations under section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486), any branch, office, or officer designated by the Secretary of the Army may sell, without advertisement and at prices that he considers reasonable—

(1) surplus obsolete small arms and ammunition and equipment for them, to any patriotic organization for military purposes; and

(2) surplus obsolete brass or bronze cannons, carriages, and cannon balls, for public parks, public buildings, and soldiers' monuments.

(Aug. 10, 1956, ch. 1041, 70A Stat. 262; Dec. 12, 1980, P.L. 96–513, § 512(19), 94 Stat. 2930.)

§ 4685. Obsolete ordnance: loan to educational institutions and State soldiers and sailors' orphans' homes

(a) Upon the recommendation of the governor of the State or Territory concerned, the Secretary of the Army, under regulations to be prescribed by him and without cost to the United States for transportation, may lend obsolete ordnance and ordnance stores to State and Territorial educational institutions and to State soldiers and sailors' orphans' homes, for drill and instruction. However, no loan may be made under this subsection to an institution to which

ordnance or ordnance stores may be issued under any law that was in effect on June 30, 1906, and is still in effect.

(b) The Secretary shall require a bond from each institution or home to which property is lent under subsection (a), in double the value of the property lent, for the care and safekeeping of that property and, except for property properly expended, for its return when required.

(Aug. 10, 1956, ch. 1041, 70A Stat. 263.)

§ 4686. Obsolete ordnance: gift to State homes for soldiers and sailors

Subject to regulations under section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486), the Secretary of the Army may give not more than two obsolete bronze or iron cannons suitable for firing salutes to any home for soldiers or sailors established and maintained under State authority.

(Aug. 10, 1956, ch. 1041, 70A Stat. 263; Dec. 12, 1980, P.L. 96–513, § 512(19), 94 Stat. 2930.)

§ 4687. Sale of excess, obsolete, or unserviceable ammunition and ammunition components [2]

(a) AUTHORITY TO SELL OUTSIDE DOD.—The Secretary of the Army may sell to an eligible purchaser described in subsection (c) ammunition or ammunition components that are excess, obsolete, or unserviceable and have not been demilitarized if—

(1) the purchaser enters into an agreement, in advance, with the Secretary—

(A) to demilitarize the ammunition or components; and

(B) to reclaim, recycle, or reuse the component parts or materials; or

(2) the Secretary, or an official of the Department of the Army designated by the Secretary, approves the use of the ammunition or components proposed by the purchaser as being consistent with the public interest.

(b) METHOD OF SALE.—The Secretary shall use competitive procedures to sell ammunition and ammunition components under this section, except that the Secretary may use procedures other than competitive procedures in any case in which the Secretary determines that there is only one potential buyer of the items being offered for sale.

(c) ELIGIBLE PURCHASERS.—To be eligible to purchase excess, obsolete, or unserviceable ammunition or ammunition components

[2] Section 1065(b) of the National Defense Authorization Act for Fiscal Year 1998 (P.L. 105–85; 111 Stat. 1893) provides:

(b) REVIEW OF INITIAL SALES.—(1) For each of the first three fiscal years during which the Secretary of the Army sells ammunition or ammunition components under the authority of section 4687 of title 10, United States Code, as added by subsection (a), the Director of the Army Audit Agency shall conduct a review of sales under such section to ensure that—

(A) purchasers that enter into an agreement under subsection (a)(1) of such section to demilitarize the purchased ammunition or ammunition components fully comply with the agreement; and

(B) purchasers that are authorized under subsection (a)(2) of such section to use the purchased ammunition or ammunition components actually use the ammunition or ammunition components in the manner proposed.

(2) Not later than 180 days after the end of each fiscal year in which the review is conducted, the Secretary of the Army shall submit to Congress a report containing the results of the review for the fiscal year covered by the report.

under this section, the purchaser shall be a licensed manufacturer (as defined in section 921(10) of title 18) that, as determined by the Secretary, has a capability to modify, reclaim, transport, and either store or sell the ammunition or ammunition components sought to be purchased.

(d) HOLD HARMLESS AGREEMENT.—The Secretary shall require a purchaser of ammunition or ammunition components under this section to agree to hold harmless and indemnify the United States from any claim for damages for death, injury, or other loss resulting from a use of the ammunition or ammunition components, except in a case of willful misconduct or gross negligence of a representative of the United States.

(e) VERIFICATION OF DEMILITARIZATION.—The Secretary shall establish procedures for ensuring that a purchaser of ammunition or ammunition components under this section demilitarizes the ammunition or ammunition components in accordance with any agreement to do so under subsection (a)(1). The procedures shall include onsite verification of demilitarization activities.

(f) CONSIDERATION.—The Secretary may accept ammunition, ammunition components, or ammunition demilitarization services as consideration for ammunition or ammunition components sold under this section. The fair market value of any such consideration shall be equal to or exceed the fair market value or, if higher, the sale price of the ammunition or ammunition components sold.

(g) RELATIONSHIP TO ARMS EXPORT CONTROL ACT.—Nothing in this section shall be construed to affect the applicability of section 38 of the Arms Export Control Act (22 U.S.C. 2778) to sales of ammunition or ammunition components on the United States Munitions List.

(h) DEFINITIONS.—In this section:

(1) The term "excess, obsolete, or unserviceable", with respect to ammunition or ammunition components, means that the ammunition or ammunition components are no longer necessary for war reserves or for support of training of the Army or production of ammunition or ammunition components.

(2) The term "demilitarize", with respect to ammunition or ammunition components—

(A) means to destroy the military offensive or defensive advantages inherent in the ammunition or ammunition components; and

(B) includes any mutilation, scrapping, melting, burning, or alteration that prevents the use of the ammunition or ammunition components for the military purposes for which the ammunition or ammunition components was designed or for a lethal purpose.

(Added P.L. 105–85, § 1065(a)(1), Nov. 18, 1997, 111 Stat. 1893.)

§ 4688. Armor-piercing ammunition and components: condition on disposal

(a) LIMITATION ON RESALE OR OTHER TRANSFER.—Except as provided in subsection (b), whenever the Secretary of the Army carries out a disposal (by sale or otherwise) of armor-piercing ammunition, or a component of armor-piercing ammunition, the Secretary shall require as a condition of the disposal that the recipient

agree in writing not to sell or otherwise transfer any of the ammunition (reconditioned or otherwise), or any armor-piercing component of that ammunition, to any purchaser in the United States other than a law enforcement or other governmental agency.

(b) EXCEPTION.—Subsection (a) does not apply to a transfer of a component of armor-piercing ammunition solely for the purpose of metal reclamation by means of a destructive process such as melting, crushing, or shredding.

(c) SPECIAL RULE FOR NON-ARMOR-PIERCING COMPONENTS.—A component of the armor-piercing ammunition that is not itself armor-piercing and is not subjected to metal reclamation as described in subsection (b) may not be used as a component in the production of new or remanufactured armor-piercing ammunition other than for sale to a law enforcement or other governmental agency or for a government-to-government sale or commercial export to a foreign government under the Arms Export Control Act (22 U.S.C. 2751).

(d) DEFINITION.—In this section, the term "armor-piercing ammunition" means a center-fire cartridge the military designation of which includes the term "armor penetrator" or "armor-piercing", including a center-fire cartridge designated as armor-piercing incendiary (API) or armor-piercing incendiary-tracer (API–T).

(Added P.L. 106–398, § 1[382(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–85.)

CHAPTER 445—DISPOSITION OF EFFECTS OF DECEASED PERSONS; CAPTURED FLAGS

Sec.
[4711. Repealed.]
4712. Disposition of effects of deceased persons by summary court-martial.
[4713. Repealed.]
4714. Collection of captured flags, standards, and colors.

[§ 4711. Repealed. P.L. 106–65, § 721(b), Oct. 5, 1999, 113 Stat. 694.]

§ 4712. Disposition of effects of deceased persons by summary court-martial

(a) Upon the death of—

(1) a person subject to military law at a place or command under the jurisdiction of the Army; or

(2) an inmate of the Army hospital outside the District of Columbia when sent from the Home to that hospital for treatment;

the commanding officer of the place or command shall permit the legal representative or the surviving spouse of the deceased, if present, to take possession of the effects of the deceased that are then in camp or quarters.

(b) If there is no legal representative or surviving spouse present, the commanding officer shall direct a summary court-martial to collect the effects of the deceased that are then in camp or quarters.

(c) The summary court-martial may collect debts due the decedent's estate by local debtors, pay undisputed local creditors of the deceased to the extent permitted by money of the deceased in the court's possession, and shall take receipts for those payments, to be filed with the court's final report to the Department of the Army.

(d) As soon as practicable after the collection of the effects and money of the deceased, the summary court-martial shall send them at the expense of the United States to the living person highest on the following list who can be found by the court:

(1) The surviving spouse or legal representative.

(2) A child of the deceased.

(3) A parent of the deceased.

(4) A brother or sister of the deceased.

(5) The next-of-kin of the deceased.

(6) A beneficiary named in the will of the deceased.

(e) If the summary court-martial cannot dispose of the effects under subsection (d) because there are no persons in those categories or because the court finds that the addresses of the persons are not known or readily ascertainable, the court may convert the effects of the deceased, except sabres, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly

as keepsakes, into cash, by public or private sale, but not until 30 days after the date of death of the deceased.

(f) As soon as practicable after the effects have been converted into cash under subsection (e), the summary court-martial shall deposit all cash in the court's possession and belonging to the estate with the officer designated in regulations, and shall send a receipt therefor, together with any will or other papers of value, an inventory of the effects, and articles not permitted to be sold, to the executive part of the Department of the Army. The Secretary of the Army shall deliver to the Armed Forces Retirement Home all items received by the executive part of the Department of the Army under this subsection.

(g) [Repealed. P.L. 104–316, § 202(g), Oct. 19, 1996; 110 Stat. 3842.]

(Aug. 10, 1956, ch. 1041, 70A Stat. 264; Nov. 2, 1966, P.L. 89–718, § 30, 80 Stat. 1119; Dec. 12, 1980, P.L. 96–513, § 512(20), 94 Stat. 2930; Nov. 8, 1985, P.L. 99–145, § 1301(b)(4)(A), 99 Stat. 736; Nov. 5, 1990, P.L. 101–510, § 1533(a)(6)(B), 104 Stat. 1734; Oct. 19, 1996, P.L. 104–316, § 202(g), 110 Stat. 3842.)

[§ 4713. Repealed P.L. 101–510, § 1553(a)(7), Nov. 5, 1990, 104 Stat. 1734]

§ 4714. Collection of captured flags, standards, and colors

The Secretary of the Army shall have sent to him all flags, standards, and colors taken by the Army from enemies of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 266.)

CHAPTER 447—TRANSPORTATION

Sec.
4741. Control and supervision.
[4742. Transferred.]
4743. Officers: use of transportation.
4744. Persons and supplies: sea transportation.
4745. Civilian passengers and commercial cargoes: transports in trans-Atlantic service.
4746. Civilian personnel in Alaska.
4747. Passengers and merchandise to Guam: sea transport.
[4748. Repealed.]
4749. Property: for United States surveys.

§ 4741. Control and supervision

The transportation of members, munitions of war, equipment, military property, and stores of the Army throughout the United States shall be under the immediate control and supervision of the Secretary of the Army and agents appointed or designated by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 266.)

[§ 4742. Transferred to § 2644]

§ 4743. Officers: use of transportation

Under such conditions as the Secretary of the Army may prescribe, officers of the Army may, in the performance of their duties, use means of transportation provided for the Army and its supplies.

(Aug. 10, 1956, ch. 1041, 70A Stat. 266.)

§ 4744. Persons and supplies: sea transportation

Whenever the Secretary of the Army considers that space is available, the following persons and supplies may be transported on vessels operated by Army transport agencies or, within bulk space allocations made to the Department of the Army, on vessels operated by any military transport agency of the Department of Defense:

(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.

(4) Members of Congress.

(5) Other officers of the United States traveling on official business.

(6) Secretaries and supplies of the Armed Services Department of the Young Men's Christian Association.

(7) Officers and employees of the Commonwealth of Puerto Rico on official business.

(8) The families of persons described in clauses (1), (2), (4), (5), and (7).

However, a person described in clause (7) or (8) may be so transported only if the transportation is without expense to the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 266; July 12, 1960, P.L. 86–624, § 4(d), 74 Stat. 411.)

§ 4745. Civilian passengers and commercial cargoes: transports in trans-Atlantic service

(a) Whenever space is unavailable on commercial lines and is available (1) on vessels operated by Army transport agencies, or (2) within bulk space allocations made to the Department of the Army on vessels operated by any transport agency of the Department of Defense, civilian passengers and commercial cargo may, in the discretion of the Secretary of the Army and the Secretary of Transportation, be transported on those vessels. Rates for transportation under this section may not be less than those charged by commercial lines for the same kinds of service.

(b) Amounts received under this section shall be covered into the Treasury as miscellaneous receipts.

(Aug. 10, 1956, ch. 1041, 70A Stat. 267; Dec. 12, 1980, P.L. 96–513, § 512(22), 94 Stat. 2930; Aug. 6, 1981, P.L. 97–31, § 12(3)(C), 95 Stat. 154.)

§ 4746. 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 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 the Department of Defense, if—

(1) the Secretary of the Army 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—

(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 be reasonably handled by a United States commercial air carrier.

(Aug. 10, 1956, ch. 1041, 70A Stat. 267; Oct. 3, 1984, P.L. 98–443, § 9(k), 98 Stat. 1708.)

§ 4747. Passengers and merchandise to Guam: sea transport

Whenever space is available, passengers, and merchandise produced in the United States, or the Territories, Commonwealths, and possessions, and consigned to residents and mercantile firms of Guam, may be transported to Guam on vessels operated by 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.

(Aug. 10, 1956, ch. 1041, 70A Stat. 267.)

[§ 4748. Repealed. P.L. 87–651, § 119(1), Sept. 7, 1962, 76 Stat. 513]

§ 4749. Property: for United States surveys

Under regulations governing the transportation of Army supplies, any branch, office, or officer designated by the Secretary of the Army shall receive, transport, and be responsible for property turned over by the officers or agents of any United States survey, for the National Museum or for a department of the United States or field office thereof. The amount paid by the Army for transportation under this section shall be refunded to the Army by the National Museum or the department to which the property is consigned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 268.)

CHAPTER 449—REAL PROPERTY

Sec.
4771. Acceptance of donations: land for mobilization, training, supply base, or aviation field.
[4772. Repealed.]
[4774, 4775. Repealed.]
4776. Emergency construction: fortifications.
4777. Permits: military reservations; landing ferries, erecting bridges, driving livestock.
4778. Licenses: military reservations; erection and use of buildings; Young Men's Christian Association.
4779. Use of public property.
4780. Acquisition of buildings in District of Columbia.

§ 4771. Acceptance of donations: land for mobilization, training, supply base, or aviation field

The Secretary of the Army may accept for the United States a gift of—

(1) land that he considers suitable and desirable for a permanent mobilization, training, or supply station; and

(2) land that he considers suitable and desirable for an aviation field, if the gift is from a citizen of the United States and its terms authorize the use of the property by the United States for any purpose.

(Aug. 10, 1956, ch. 1041, 70A Stat. 268.)

[§ 4772. Repealed. P.L. 97–295, § 1(43)(A), Oct. 12, 1982, 96 Stat. 1298]

[§ 4774. Repealed. P.L. 97–214, § 7(1), July 12, 1982, 96 Stat. 173]

[§ 4775. Repealed. P.L. 92–145, § 509(a), Oct. 27, 1971, 85 Stat. 408]

§ 4776. Emergency construction: fortifications

If in an emergency the President considers it urgent, a temporary fort or fortification may be built on private land if the owner consents in writing.

(Aug. 10, 1956, ch. 1041, 70A Stat. 270; Sept. 1, 1970, P.L. 91–393, § 5, 84 Stat. 835.)

§ 4777. Permits: military reservations; landing ferries, erecting bridges, driving livestock

Whenever the Secretary of the Army considers that it can be done without injury to the reservation or inconvenience to the military forces stationed there, he may permit—

(1) the landing of ferries at a military reservation;

(2) the erection of bridges on a military reservation; and

(3) the driving of livestock across a military reservation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 270; Dec. 12, 1980, P.L. 96–513, § 512(23), 94 Stat. 2930.)

§ 4778. Licenses: military reservations; erection and use of buildings; Young Men's Christian Association

Under such conditions as he may prescribe, the Secretary of the Army may issue a revocable license to the International Committee of Young Men's Christian Associations of North America to erect and maintain on military reservations, inside the United States and the Territories, Commonwealths, and possessions, buildings needed by that organization for the promotion of the social, physical, intellectual, and moral welfare of the members of the Army on those reservations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 270.)

§ 4779. Use of public property

(a) When the economy of the Army so requires, the Secretary of the Army shall establish military headquarters in places where suitable buildings are owned by the United States.

(b) No money appropriated for the support of the Army may be spent for post gardens or Army exchanges. However, this does not prevent Army exchanges from using public buildings or public transportation that, in the opinion of the office or officer designated by the Secretary, are not needed for other purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 270; Nov. 14, 1986, P.L. 99–661, § 2721, 100 Stat. 4042.)

§ 4780. Acquisition of buildings in District of Columbia

(a) In time of war or when war is imminent, the Secretary of the Army may acquire by lease any building, or part of a building, in the District of Columbia that may be needed for military purposes.

(b) At any time, the Secretary may, for the purposes of the Department of the Army, requisition the use and take possession of any building or space in any building, and its appurtenances, in the District of Columbia, other than—

(1) a dwelling house occupied as such;

(2) a building occupied by any other agency of the United States; or

(3) space in such a dwelling house or building.

The Secretary shall determine, and pay out of funds appropriated for the payment of rent by the Department of the Army, just compensation for that use. If the amount of the compensation is not satisfactory to the person entitled to it, the Secretary shall pay 75 percent of it to that person, and the claimant is entitled to recover by action against the United States an additional amount that, when added to the amount paid by the Secretary, is determined by the court to be just compensation for that use.

(Added P.L. 85–861, § 1(105)(A), Sept. 2, 1958, 72 Stat. 1489.)

CHAPTER 451—MILITARY CLAIMS

Sec.
4801. Definition.
4802. Admiralty claims against the United States.
4803. Admiralty claims by United States.
4804. Salvage claims by United States.
[4805. Repealed.]
4806. Settlement or compromise: final and conclusive.

§ 4801. Definition

In this chapter, the term "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. 270; Dec. 4, 1987, P.L. 100–180, § 1231(19)(B), 101 Stat. 1161.)

§ 4802. Admiralty claims against the United States

(a) The Secretary of the Army may settle or compromise an admiralty claim against the United States for—

(1) damage caused by a vessel of, or in the service of, the Department of the Army or by other property under the jurisdiction of the Department of the Army;

(2) compensation for towage and salvage service, including contract salvage, rendered to a vessel of, or in the service of, the Department of the Army or to other property under the jurisdiction of the Department of the Army; or

(3) damage caused by a maritime tort committed by any agent or employee of the Department of the Army or by property under the jurisdiction of the Department of the Army.

(b) If a claim under subsection (a) is settled or compromised for $500,000 or less, the Secretary of the Army may pay it. If it is settled or compromised for more than $500,000, he shall certify it to Congress.

(c) In any case where the amount to be paid is not more than $100,000, the Secretary of the Army may delegate his authority under subsection (a) to any person in the Department of the Army designated by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 271; July 7, 1965, P.L. 89–67, 79 Stat. 212; Aug. 29, 1972, P.L. 92–417, § 1(1), 86 Stat. 654; Nov. 29, 1989, P.L. 101–189, § 1633, 103 Stat. 1608.)

§ 4803. Admiralty claims by United States

(a) Under the direction of the Secretary of Defense, the Secretary of the Army may settle, or compromise, and receive payment of a claim by the United States for damage to property under the jurisdiction of the Department of the Army or property for which the Department has assumed an obligation to respond for damage, if—

(1) the claim is—

(A) of a kind that is within the admiralty jurisdiction of a district court of the United States; or

(B) for damage caused by a vessel or floating object; and

(2) the amount to be received by the United States is not more than $500,000.

(b) In exchange for payment of an amount found to be due the United States under subsection (a), the Secretary of the Army may execute a release of the claim on behalf of the United States. Amounts received under this section shall be covered into the Treasury.

(c) In any case where the amount to be received by the United States is not more than $100,000, the Secretary of the Army may delegate his authority under subsections (a) and (b) to any person in the Department of the Army designated by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 271; July 7, 1965, P.L. 89–67, 79 Stat. 212; Nov. 29, 1989, P.L. 101–189, § 1633, 103 Stat. 1608.)

§ 4804. Salvage claims by United States

(a) The Secretary of the Army may settle, or compromise, and receive payment of a claim by the United States for salvage services performed by the Department of the Army. Amounts received under this section shall be covered into the Treasury.

(b) In any case where the amount to be received by the United States is not more than $10,000, the Secretary of the Army may delegate his authority under subsection (a) to any person designated by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 271; Aug. 29, 1972, P.L. 92–417, § 1(3), 86 Stat. 654.)

[§ 4805. Repealed. P.L. 86–533, § 1(8)(A), June 29, 1960, 74 Stat. 247]

§ 4806. Settlement or compromise: final and conclusive

Notwithstanding any other provision of law, upon acceptance of payment the settlement or compromise of a claim under section 4802 or 4803 of this title is final and conclusive.

(Aug. 10, 1956, ch. 1041, 70A Stat. 272.)

CHAPTER 453—ACCOUNTABILITY AND RESPONSIBILITY

Sec.
4831. Custody of departmental records and property.
4832. Property accountability: regulations.
[4833, 4834. Repealed.]
4835. Reports of survey.
4836. Individual equipment: unauthorized disposition.
4837. Settlement of accounts: remission or cancellation of indebtedness of enlisted members.
4838. Settlement of accounts: affidavit of company commander.
4839. Settlement of accounts: oaths.
4840. Final settlement of officer's accounts.
4841. Payment of small amounts to public creditors.
4842. Settlement of accounts of line officers.

§ 4831. Custody of departmental records and property

The Secretary of the Army has custody and charge of all books, records, papers, furniture, fixtures, and other property under the lawful control of the executive part of the Department of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 272.)

§ 4832. Property accountability: regulations

The Secretary of the Army may prescribe regulations for the accounting for Army property and the fixing of responsibility for that property.

(Aug. 10, 1956, ch. 1041, 70A Stat. 272.)

[§ 4833. Repealed. P.L. 87–480, § 1(2), June 8, 1962, 76 Stat. 94]

[§ 4834. Repealed. P.L. 92–310, § 204(a), June 6, 1972, 86 Stat. 202]

§ 4835. Reports of survey

(a) Under such regulations as the Secretary of the Army may prescribe, any officer of the Army or any civilian employee of the Department of the Army designated by him 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 the Army.

(b) Action taken under subsection (a) is final, except that action holding a person pecuniarily liable for loss, spoilage, destruction, or damage is not final until approved by the Secretary or the Secretary's designee. The Secretary may designate officers of the Army or civilian employees of the Department of the Army to approve such action.

(Aug. 10, 1956, ch. 1041, 70A Stat. 273; Nov. 30, 1993, P.L. 103–160, § 362, 107 Stat. 1628.)

§ 4836. Individual equipment: unauthorized disposition

(a) No enlisted member of the Army may sell, lend, pledge, barter, or give any clothing, arms, or equipment furnished him by the United States to any person other than a member of the Army, or an officer of the United States, authorized to receive it.

(b) If a member of the Army has disposed of property in violation of subsection (a) and it is in the possession of a person who is neither a member of the Army, nor an officer of the United States, 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 it, wherever found. Possession of such property furnished by the United States to a member of the Army, by a person who is neither a member of the Army nor an officer of the United States, is prima facie evidence that it has been disposed of in violation of subsection (a).

(c) If an officer who seizes property under subsection (b) is not authorized to retain it for the United States, he shall deliver it to a person who is authorized to retain it.

(Aug. 10, 1956, ch. 1041, 70A Stat. 273.)

§ 4837. Settlement of accounts: remission or cancellation of indebtedness of enlisted members

If he considers it in the best interest of the United States, the Secretary may have remitted or cancelled any part of an enlisted member's indebtedness to the United States or any of its instrumentalities remaining unpaid before, or at the time of, that member's honorable discharge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 273; Sept. 2, 1958, P.L. 85–861, § 33(a)(27), 72 Stat. 1566; Sept. 7, 1962, P.L. 87–649, § 14c(10), 76 Stat. 501; Dec. 12, 1980, P.L. 96–513, § 512(24)(A), (B), 94 Stat. 2930.)

§ 4838. Settlement of accounts: affidavit of company commander

In the settlement of the accounts of the commanding officer of a company for clothing and other military supplies, his affidavit may be received to show—

(1) that vouchers or company books were lost;

(2) anything tending to prove that any apparent deficiency of those articles was caused by unavoidable accident, or by loss in actual service without his fault; or

(3) that all or part of the clothing and supplies was properly used.

The affidavit may be used as evidence of the facts set forth, with or without other evidence, as determined by the Secretary of the Army to be just and proper under the circumstances.

(Aug. 10, 1956, ch. 1041, 70A Stat. 274.)

§ 4839. Settlement of accounts: oaths

The Secretary of the Army may detail any employee of the Department of the Army to administer oaths required by law in the settlement of an officer's accounts for clothing and other military supplies. An oath administered under this section shall be without expense to the person to whom it is administered.

(Aug. 10, 1956, ch. 1041, 70A Stat. 274.)

§ 4840. Final settlement of officer's accounts

Before final payment upon discharge may be made to an officer of the Army who has been accountable or responsible for public property, he must obtain a certificate of nonindebtedness to the United States from each officer to whom he was accountable or responsible for property. He must also make an affidavit, certified by his commanding officer to be correct, that he is not accountable or responsible for property to any other officer. An officer who has not been responsible for public property must make an affidavit of that fact, certified by his commanding officer. Compliance with this section warrants the final payment of the officer concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 274.)

§ 4841. Payment of small amounts to public creditors

When authorized by the Secretary of the Army, a disbursing official of Army subsistence funds may keep a limited amount of those funds in the personal possession and at the risk of the disbursing official to pay small amounts to public creditors.

(Added P.L. 97–258, § 2(b)(10)(B), Sept. 13, 1982, 96 Stat. 1056.)

§ 4842. Settlement of accounts of line officers

The Comptroller General shall settle the account of a line officer of the Army for pay due the officer even if the officer cannot account for property entrusted to the officer or cannot make a monthly report or return, when the Comptroller General is satisfied that the inability to account for property or make a report or return was the result of the officer having been a prisoner, or of an accident or casualty of war.

(Added P.L. 97–258, § 2(b)(10)(B), Sept. 13, 1982, 96 Stat. 1057.)

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CHAPTER 501—DEFINITIONS

Sec.
5001. Definitions.

§ 5001. Definitions

(a) In this subtitle:

(1) The term "Navy" means the United States Navy. It includes the Regular Navy, the Fleet Reserve, and the Naval Reserve.

(2) The term "Marine Corps" means the United States Marine Corps. It includes the Regular Marine Corps, the Fleet Marine Corps Reserve, and the Marine Corps Reserve.

(3) The term "member of the naval service" means a person appointed or enlisted in, or inducted or conscripted into, the Navy or the Marine Corps.

(4) The term "enlisted member" means a member of the naval service serving in an enlisted grade or rating. It excludes, unless otherwise specified, a member who holds a permanent enlisted grade and a temporary appointment in a commissioned or warrant officer grade.

(5) The term "officer" means a member of the naval service serving in a commissioned or warrant officer grade. It includes, unless otherwise specified, a member who holds a permanent enlisted grade and a temporary appointment in a commissioned or warrant officer grade.

(6) The term "commissioned officer" means a member of the naval service serving in a grade above warrant officer, W–1. It includes, unless otherwise specified, a member who holds a permanent enlisted grade or the permanent grade of warrant officer, W–1, and a temporary appointment in a grade above warrant officer, W–1.

(7) The term "warrant officer" means a member of the naval service serving in a warrant officer grade. It includes, unless otherwise specified, a member who holds a permanent enlisted grade and a temporary appointment in a warrant officer grade.

(8) The term "officer restricted in the performance of duty" means an officer of the Navy designated for engineering duty, aeronautical engineering duty, special duty, or limited duty, or an officer of the Marine Corps designated for limited duty.

(b) For the purposes of this subtitle, a member of the naval service who holds a temporary appointment in a grade higher than his permanent grade is considered, unless otherwise specified, to be serving in the higher grade.

(Aug. 10, 1956, ch. 1041, 70A Stat. 276; Aug. 3, 1961, P.L. 87–123, § 5(1), 75 Stat. 264; Dec. 12, 1980, P.L. 96–513, § 371, § 513(2), 94 Stat. 2903, 2931; April 21, 1987, P.L. 100–26, § 7(k)(2), 101 Stat. 284.)

CHAPTER 503—DEPARTMENT OF THE NAVY

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§ 5011. Organization

The Department of the Navy is separately organized under the Secretary of the Navy. It operates under the authority, direction, and control of the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 277; Sept. 7, 1962, P.L. 87–651, § 212, 76 Stat. 524; Oct. 1, 1986, P.L. 99–433, § 511 (b)(2), (c)(1), 100 Stat. 1043.)

§ 5012. Department of the Navy: seal

The Secretary of the Navy shall have a seal for the Department of the Navy. The design of the seal must be approved by the President. Judicial notice shall be taken of the seal.

(Added P.L. 99–433, § 511(c)(2), Oct. 1, 1986, 100 Stat. 1043 (former § 5012 transferred to § 5062).)

§ 5013. Secretary of the Navy

(a)(1) There is a Secretary of the Navy, appointed from civilian life by the President, by and with the advice and consent of the Senate. The Secretary is the head of the Department of the Navy.

(2) A person may not be appointed as Secretary of the Navy within five years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) Subject to the authority, direction, and control of the Secretary of Defense and subject to the provisions of chapter 6 of this title, the Secretary of the Navy is responsible for, and has the authority necessary to conduct, all affairs of the Department of the Navy, including the following functions:

(1) Recruiting.
(2) Organizing.
(3) Supplying.
(4) Equipping (including research and development).

(5) Training.

(6) Servicing.

(7) Mobilizing.

(8) Demobilizing.

(9) Administering (including the morale and welfare of personnel).

(10) Maintaining.

(11) The construction, outfitting, and repair of military equipment.

(12) The construction, maintenance, and repair of buildings, structures, and utilities and the acquisition of real property and interests in real property necessary to carry out the responsibilities specified in this section.

(c) Subject to the authority, direction, and control of the Secretary of Defense, the Secretary of the Navy is also responsible to the Secretary of Defense for—

(1) the functioning and efficiency of the Department of the Navy;

(2) the formulation of policies and programs by the Department of the Navy that are fully consistent with national security objectives and policies established by the President or the Secretary of Defense;

(3) the effective and timely implementation of policy, program, and budget decisions and instructions of the President or the Secretary of Defense relating to the functions of the Department of the Navy;

(4) carrying out the functions of the Department of the Navy so as to fulfill (to the maximum extent practicable) the current and future operational requirements of the unified and specified combatant commands;

(5) effective cooperation and coordination between the Department of the Navy and the other military departments and agencies of the Department of Defense to provide for more effective, efficient, and economical administration and to eliminate duplication;

(6) the presentation and justification of the positions of the Department of the Navy on the plans, programs, and policies of the Department of Defense; and

(7) the effective supervision and control of the intelligence activities of the Department of the Navy.

(d) The Secretary of the Navy is also responsible for such other activities as may be prescribed by law or by the President or Secretary of Defense.

(e) After first informing the Secretary of Defense, the Secretary of the Navy may make such recommendations to Congress relating to the Department of Defense as he considers appropriate.

(f) The Secretary of the Navy may assign such of his functions, powers, and duties as he considers appropriate to the Under Secretary of the Navy and to the Assistant Secretaries of the Navy. Officers of the Navy and the Marine Corps shall, as directed by the Secretary, report on any matter to the Secretary, the Under Secretary, or any Assistant Secretary.

(g) The Secretary of the Navy may—

(1) assign, detail, and prescribe the duties of members of the Navy and Marine Corps and civilian personnel of the Department of the Navy;

(2) change the title of any officer or activity of the Department of the Navy not prescribed by law; and

(3) prescribe regulations to carry out his functions, powers, and duties under this title.

(Added P.L. 99–433, § 511(c)(2), Oct. 1, 1986, 100 Stat. 1043 [formerly covered by § 5031] (former § 5013 transferred to § 5063), amended P.L. 99–661, § 534, Nov. 19, 1986, 100 Stat. 3873.)

§ 5013a. Secretary of the Navy: powers with respect to Coast Guard

(a) Whenever the Coast Guard operates as a service in the Navy under section 3 of title 14, the Secretary of the Navy has the same powers and duties with respect to the Coast Guard as the Secretary of Transportation has when the Coast Guard is not so operating.

(b) While operating as a service in the Navy, the Coast Guard is subject to the orders of the Secretary of the Navy, who may order changes in Coast Guard operations to make them uniform, to the extent he considers advisable, with Navy operations.

(Aug. 10, 1956, § 5032, ch. 1041, 70A Stat. 279; Dec. 12, 1980, P.L. 96–513, § 513(3), 94 Stat. 2931; transferred and redesignated § 5013a, Oct. 1, 1986, P.L. 99–433, § 511(c)(3), 100 Stat. 1045.)

§ 5014. Office of the Secretary of the Navy

(a) There is in the Department of the Navy an Office of the Secretary of the Navy. The function of the Office is to assist the Secretary of the Navy in carrying out his responsibilities.

(b) The Office of the Secretary of the Navy is composed of the following:

(1) The Under Secretary of the Navy.

(2) The Assistant Secretaries of the Navy.

(3) The General Counsel of the Department of the Navy.

(4) The Judge Advocate General of the Navy.

(5) The Naval Inspector General.

(6) The Chief of Naval Research.

(7) Such other offices and officials as may be established by law or as the Secretary of the Navy may establish or designate.

(c)(1) The Office of the Secretary of the Navy shall have sole responsibility within the Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, and the Headquarters, Marine Corps, for the following functions:

(A) Acquisition.

(B) Auditing.

(C) Comptroller (including financial management).

(D) Information management.

(E) Inspector General.

(F) Legislative affairs.

(G) Public affairs.

(2) The Secretary of the Navy shall establish or designate a single office or other entity within the Office of the Secretary of the Navy to conduct each function specified in paragraph (1). No office or other entity may be established or designated within the Office

of the Chief of Naval Operations or the Headquarters, Marine Corps, to conduct any of the functions specified in paragraph (1).

(3) The Secretary shall—

(A) prescribe the relationship of each office or other entity established or designated under paragraph (2)—

(i) to the Chief of Naval Operations and the Office of the Chief of Naval Operations; and

(ii) to the Commandant of the Marine Corps and the Headquarters, Marine Corps; and

(B) ensure that each such office or entity provides the Chief of Naval Operations and the Commandant of the Marine Corps such staff support as each considers necessary to perform his duties and responsibilities.

(4) The vesting in the Office of the Secretary of the Navy of the responsibility for the conduct of a function specified in paragraph (1) does not preclude other elements of the executive part of the Department of the Navy (including the Office of the Chief of Naval Operations and the Headquarters, Marine Corps) from providing advice or assistance to the Chief of Naval Operations and the Commandant of the Marine Corps or otherwise participating in that function within the executive part of the Department under the direction of the office assigned responsibility for that function in the Office of the Secretary of the Navy.

(5)(A) The head of the office or other entity established or designated by the Secretary to conduct the auditing function shall have at least five years of professional experience in accounting or auditing. The position shall be considered to be a career reserved position as defined in section 3132(a)(8) of title 5.

(B) The position of regional director within such office or entity, and any other position within such office or entity the primary responsibilities of which are to carry out supervisory functions, may not be held by a member of the armed forces on active duty.

(d)(1) Subject to paragraph (2), the Office of the Secretary of the Navy shall have sole responsibility within the Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, and the Headquarters, Marine Corps, for the function of research and development.

(2) The Secretary of the Navy may assign to the Office of the Chief of Naval Operations and the Headquarters, Marine Corps, responsibility for those aspects of the function of research and development relating to military requirements and test and evaluation.

(3) The Secretary shall establish or designate a single office or other entity within the Office of the Secretary of the Navy to conduct the function specified in paragraph (1).

(4) The Secretary shall—

(A) prescribe the relationship of the office or other entity established or designated under paragraph (3)—

(i) to the Chief of Naval Operations and the Office of the Chief of Naval Operations; and

(ii) to the Commandant of the Marine Corps and the Headquarters, Marine Corps; and

(B) ensure that each such office or entity provides the Chief of Naval Operations and the Commandant of the Marine Corps such staff support as each considers necessary to perform his duties and responsibilities.

(e) The Secretary of the Navy shall ensure that the Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, and the Headquarters, Marine Corps, do not duplicate specific functions for which the Secretary has assigned responsibility to another of such offices.

(f)(1) The total number of members of the armed forces and civilian employees of the Department of the Navy assigned or detailed to permanent duty in the Office of the Secretary of the Navy, the Office of Chief of Naval Operations, and the Headquarters, Marine Corps, may not exceed 2,866.

(2) Not more than 1,720 officers of the Navy and Marine Corps on the active-duty list may be assigned or detailed to permanent duty in the Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, and the Headquarters, Marine Corps.

(3) The total number of general and flag officers assigned or detailed to permanent duty in the Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, and the Headquarters, Marine Corps, may not exceed the number equal to 85 percent of the number of general and flag officers assigned or detailed to such duty on the date of the enactment of this subsection.

(4) The limitations in paragraphs (1), (2), and (3) do not apply in time of war or during a national emergency declared by the President or Congress. The limitation in paragraph (2) does not apply whenever the President determines that it is in the national interest to increase the number of officers assigned or detailed to permanent duty in the Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, or the Headquarters, Marine Corps.

(Added P.L. 99–433, § 511(c)(4), Oct. 1, 1986, 100 Stat. 1045 [former § 5014 repealed P.L. 88–426, § 305(40)(A), Aug. 14, 1964]; amended P.L. 100–180, § 1314(b)(7), Dec. 4, 1987, 101 Stat. 1175; P.L. 100–456, § 325(b), Sept. 29, 1988, 102 Stat. 1955; P.L. 101–189, § 652(a)(4), Nov. 29, 1989, 103 Stat. 1461.)

§ 5015. Under Secretary of the Navy

(a) There is an Under Secretary of the Navy, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The Under Secretary shall perform such duties and exercise such powers as the Secretary of the Navy may prescribe.

(Added P.L. 99–433, § 511(c)(4), Oct. 1, 1986, 100 Stat. 1047 [formerly covered by § 5033].)

§ 5016. Assistant Secretaries of the Navy

(a) There are four Assistant Secretaries of the Navy. They shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b)(1) The Assistant Secretaries shall perform such duties and exercise such powers as the Secretary of the Navy may prescribe.

(2) One of the Assistant Secretaries shall be the Assistant Secretary of the Navy for Manpower and Reserve Affairs. He shall have as his principal duty the overall supervision of manpower and reserve component affairs of the Department of the Navy.

(3) One of the Assistant Secretaries shall be the Assistant Secretary of the Navy for Financial Management. The Assistant Secretary shall have as his principal responsibility the exercise of the comptroller functions of the Department of the Navy, including financial management functions. The Assistant Secretary shall be responsible for all financial management activities and operations of the Department of the Navy and shall advise the Secretary of the Navy on financial management.

(Added P.L. 99–433, § 511(c)(4), Oct. 1, 1986, 100 Stat. 1047; P.L. 100–456, § 702(b)(1), Sept. 29, 1988, 102 Stat. 1994 [formerly covered by § 5034].)

§ 5017. Secretary of the Navy: successors to duties

If the Secretary of the Navy dies, resigns, is removed from office, is absent, or is disabled, the person who is highest on the following list, and who is not absent or disabled, shall perform the duties of the Secretary until the President, under section 3347 of title 5, directs another person to perform those duties or until the absence or disability ceases:

(1) The Under Secretary of the Navy.

(2) The Assistant Secretaries of the Navy, in the order prescribed by the Secretary of the Navy and approved by the Secretary of Defense.

(3) The General Counsel of the Department of the Navy.

(4) The Chief of Naval Operations.

(5) The Commandant of the Marine Corps.

(Added P.L. 99–433, § 511(c)(4), Oct. 1, 1986, 100 Stat. 1047 [formerly covered by § 5036]; amended P.L. 103–337, § 902(b), Oct. 5, 1994, 108 Stat. 2823.)

§ 5018. Administrative Assistant

The Secretary of the Navy may appoint an Administrative Assistant in the Office of the Secretary of the Navy. The Administrative Assistant shall perform such duties as the Secretary may prescribe.

(Added P.L. 99–433, § 511(c)(4), Oct. 1, 1986, 100 Stat. 1047.)

§ 5019. General Counsel

(a) There is a General Counsel of the Department of the Navy, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The General Counsel shall perform such functions as the Secretary of the Navy may prescribe.

(Added P.L. 99–433, § 511(c)(4), Oct. 1, 1986, 100 Stat. 1047; amended P.L. 100–456, § 703(a), Sept. 29, 1988, 102 Stat. 1996.)

§ 5020. Naval Inspector General: detail; duties

(a) There is in the Office of the Secretary of the Navy the Office of the Naval Inspector General. The Naval Inspector General shall be detailed from officers on the active-duty list in the line of the Navy serving in grades above captain.

(b) The Naval Inspector General, when directed, shall inquire into and report upon any matter that affects the discipline or military efficiency of the Department of the Navy. He shall make such inspections, investigations, and reports as the Secretary of the Navy or the Chief of Naval Operations directs.

(c) The Naval Inspector General shall cooperate fully with the Inspector General of the Department of Defense in connection with the performance of any duty or function by the Inspector General of the Department of Defense under the Inspector General Act of 1978 (5 U.S.C. App. 3) regarding the Department of the Navy.

(d) The Naval Inspector General shall periodically propose programs of inspections to the Secretary of the Navy and shall recommend additional inspections and investigations as may appear appropriate.

(Aug. 10, 1956, § 5088, ch. 1041, 70A Stat. 283; Dec. 12, 1980, P.L. 96–513, § 503(7), 94 Stat. 2911; transferred, redesignated § 5020, and amended Oct. 1, 1986, P.L. 99–433, § 5011(c)(5), 100 Stat. 1047.)

[§ 5021. Repealed. P.L. 101–510, § 910(a), Nov. 5, 1990, 104 Stat. 1625]

§ 5022. Office of Naval Research: duties

(a)(1) There is in the Office of the Secretary of the Navy an Office of Naval Research.

(2) Unless appointed to higher grade under another provision of law, an officer, while serving in the Office of Naval Research as Chief of Naval Research, has the rank of rear admiral (upper half).

(b) The Office of Naval Research shall perform such duties as the Secretary of the Navy prescribes relating to—

(1) the encouragement, promotion, planning, initiation, and coordination of naval research;

(2) the conduct of naval research in augmentation of and in conjunction with the research and development conducted by the bureaus and other agencies and offices of the Department of the Navy;

(3) the supervision, administration, and control of activities within or for the Department relating to patents, inventions, trademarks, copyrights, and royalty payments, and matters connected therewith; and

(4) the execution of, and management responsibility for, programs for which funds are provided in the basic and applied research and advanced technology categories of the Department of the Navy research, development, test, and evaluation budget in such a manner that will foster the transition of science and technology to higher levels of research, development, test, and evaluation.

(c) Sufficient information relative to estimates of appropriations for research by the several bureaus and offices shall be furnished to the Office of Naval Research to assist it in coordinating naval research and carrying out its other duties.

(d) The Office of Naval Research shall perform its duties under the authority of the Secretary, and its orders are considered as coming from the Secretary.

(Aug. 10, 1956, § 5151, ch. 1041, 70A Stat. 291; transferred and redesignated § 5022, Oct. 1, 1986, P.L. 99–433, § 511(d), Oct. 1, 1986, 100 Stat. 1048; Nov. 5, 1990, P.L. 101–510, § 910(b)(1), 104 Stat. 1625; P.L. 104–201, § 501(a), Sept. 23, 1996, 110 Stat. 2510; Oct. 30, 2000, P.L. 106–398, § 1[904(b)], 114 Stat. 1654, 1654A–225.)

§ 5023. Office of Naval Research: appropriations; time limit

(a) Sums appropriated for the Office of Naval Research may be used to pay the cost of performing its duties under section 5022 of this title including the cost of—

(1) administration;

(2) conduct of research and development work in Government facilities; and

(3) conduct of research and development work under contracts with individuals, corporations, and educational or scientific institutions.

(b) Sums appropriated for the purposes of this section, if obligated during the fiscal year for which appropriated, remain available for expenditure for four years after the end of that fiscal year. Any balance not spent after that four-year period shall be carried to the surplus fund and covered into the Treasury.

(Aug. 10, 1956, § 5152, ch. 1041, 70A Stat. 291; transferred, redesignated § 5023, and amended Oct. 1, 1986, P.L. 99–433, §§ 511(d), 514(c)(2), 100 Stat. 1048, 1055.)

§ 5024. Naval Research Advisory Committee

(a) The Secretary of the Navy may appoint a Naval Research Advisory Committee consisting of not more than 15 civilians preeminent in the fields of science, research, and development work. One member of the Committee must be from the field of medicine. Each member serves for such term as the Secretary specifies.

(b) The Committee shall meet at such times as the Secretary specifies to consult with and advise the Chief of Naval Operations and the Chief of Naval Research.

(c) No law imposing restrictions, requirements, or penalties in relation to the employment of persons, the performance of services, the payment or receipt of compensation in connection with any claim, proceeding, or matter involving the United States applies to members of the Committee solely by reason of their membership on the Committee.

(Aug. 10, 1956, § 5153, ch. 1041, 70A Stat. 291; Oct. 14, 1981, P.L. 97–60, § 205, 95 Stat. 1007; transferred, redesignated § 5024, and amended Oct. 1, 1986, P.L. 99–433, §§ 511(d), 514(d)(2), 100 Stat. 1048, 1055.)

§ 5025. Financial management

(a) The Secretary of the Navy shall provide that the Assistant Secretary of the Navy for Financial Management shall direct and manage financial management activities and operations of the Department of the Navy, including ensuring that financial management systems of the Department of the Navy comply with subsection (b). The authority of the Assistant Secretary for such direction and management shall include the authority to—

(1) supervise and direct the preparation of budget estimates of the Department of the Navy and otherwise carry out, with respect to the Department of the Navy, the functions specified for the Under Secretary of Defense (Comptroller) in section 135(c) of this title;

(2) approve and supervise any project to design or enhance a financial management system for the Department of the Navy; and

(3) approve the establishment and supervise the operation of any asset management system of the Department of the Navy, including—

(A) systems for cash management, credit management, and debt collection; and

(B) systems for the accounting for the quantity, location, and cost of property and inventory.

(b)(1) Financial management systems of the Department of the Navy (including accounting systems, internal control systems, and financial reporting systems) shall be established and maintained in conformance with—

(A) the accounting and financial reporting principles, standards, and requirements established by the Comptroller General under section 3511 of title 31; and

(B) the internal control standards established by the Comptroller General under section 3512 of title 31.

(2) Such systems shall provide for—

(A) complete, reliable, consistent, and timely information which is prepared on a uniform basis and which is responsive to the financial information needs of department management;

(B) the development and reporting of cost information;

(C) the integration of accounting and budgeting information; and

(D) the systematic measurement of performance.

(c) The Assistant Secretary shall maintain a five-year plan describing the activities the Department of the Navy proposes to conduct over the next five fiscal years to improve financial management. Such plan shall be revised annually.

(d) The Assistant Secretary of the Navy for Financial Management shall transmit to the Secretary of the Navy a report each year on the activities of the Assistant Secretary during the preceding year. Each such report shall include a description and analysis of the status of the Department of the Navy financial management.

(Added P.L. 100–456, § 702(b)(2), Sept. 29, 1988, 102 Stat. 1994; amended P.L. 103–337, § 1070(a)(15), Oct. 5, 1994, 108 Stat. 2856; P.L. 104–106, § 1503(b)(1), Feb. 10, 1996, 110 Stat. 512.)

§ 5026. Consultation with Commandant of the Marine Corps on major decisions directly concerning Marine Corps aviation

The Secretary of the Navy shall ensure that the views of the Commandant of the Marine Corps are given appropriate consideration before a major decision is made by an element of the Department of the Navy outside the Marine Corps on a matter that directly concerns Marine Corps aviation.

(Added P.L. 105–261, § 935(a), Oct. 17, 1998, 112 Stat. 2109.)

CHAPTER 505—OFFICE OF THE CHIEF OF NAVAL OPERATIONS

Sec.
5031. Office of the Chief of Naval Operations: function; composition.
5032. Office of the Chief of Naval Operations: general duties.
5033. Chief of Naval Operations.
[5034. Repealed.]
5035. Vice Chief of Naval Operations.
5036. Deputy Chiefs of Naval Operations.
5037. Assistant Chiefs of Naval Operations.
5038. Director for Expeditionary Warfare.

§ 5031. Office of the Chief of Naval Operations: function; composition

(a) There is in the executive part of the Department of the Navy an Office of the Chief of Naval Operations. The function of the Office of the Chief of Naval Operations is to assist the Secretary of the Navy in carrying out his responsibilities.

(b) The Office of the Chief of Naval Operations is composed of the following:

(1) The Chief of Naval Operations.

(2) The Vice Chief of Naval Operations.

(3) The Deputy Chiefs of Naval Operations.

(4) The Assistant Chiefs of Naval Operations.

(5) The Surgeon General of the Navy.

(6) The Chief of Naval Personnel.

(7) The Chief of Chaplains of the Navy.

(8) Other members of the Navy and Marine Corps assigned or detailed to the Office of the Chief of Naval Operations.

(9) Civilian employees in the Department of the Navy assigned or detailed to the Office of the Chief of Naval Operations.

(c) Except as otherwise specifically prescribed by law, the Office of the Chief of Naval Operations shall be organized in such manner, and its members shall perform such duties and have such titles, as the Secretary may prescribe.

(Added P.L. 99–433, § 512(b), Oct. 1, 1986, 100 Stat. 1048 [former § 5031 repealed and now covered by § 5013].)

§ 5032. Office of the Chief of Naval Operations: general duties

(a) The Office of the Chief of Naval Operations shall furnish professional assistance to the Secretary, the Under Secretary, and the Assistant Secretaries of the Navy and to the Chief of Naval Operations.

(b) Under the authority, direction, and control of the Secretary of the Navy, the Office of the Chief of Naval Operations shall—

(1) subject to subsections (c) and (d) of section 5014 of this title, prepare for such employment of the Navy, and for such

recruiting, organizing, supplying, equipping (including those aspects of research and development assigned by the Secretary of the Navy), training, servicing, mobilizing, demobilizing, administering, and maintaining of the Navy, as will assist in the execution of any power, duty, or function of the Secretary or the Chief of Naval Operations;

(2) investigate and report upon the efficiency of the Navy and its preparation to support military operations by combatant commands;

(3) prepare detailed instructions for the execution of approved plans and supervise the execution of those plans and instructions;

(4) as directed by the Secretary or the Chief of Naval Operations, coordinate the action of organizations of the Navy; and

(5) perform such other duties, not otherwise assigned by law, as may be prescribed by the Secretary.

(Added P.L. 99–433, § 512(b), Oct. 1, 1986, 100 Stat. 1049 [former § 5032 transferred to § 5013a].)

§ 5033. Chief of Naval Operations

(a)(1) There is a Chief of Naval Operations, appointed by the President, by and with the advice and consent of the Senate. The Chief of Naval Operations shall be appointed for a term of four years, from officers on the active-duty list in the line of the Navy who are eligible to command at sea and who hold the grade of rear admiral or above. He serves at the pleasure of the President. In time of war or during a national emergency declared by Congress, he may be reappointed for a term of not more than four years.

(2) The President may appoint an officer as the Chief of Naval Operations only if—

(A) the officer has had significant experience in joint duty assignments; and

(B) such experience includes at least one full tour of duty in a joint duty assignment (as defined in section 664(f) of this title) as a flag officer.

(3) The President may waive paragraph (2) in the case of an officer if the President determines such action is necessary in the national interest.

(b) The Chief of Naval Operations, while so serving, has the grade of admiral without vacating his permanent grade. In the performance of his duties within the Department of the Navy, the Chief of Naval Operations takes precedence above all other officers of the naval service.

(c) Except as otherwise prescribed by law and subject to section 5013(f) of this title, the Chief of Naval Operations performs his duties under the authority, direction, and control of the Secretary of the Navy and is directly responsible to the Secretary.

(d) Subject to the authority, direction, and control of the Secretary of the Navy, the Chief of Naval Operations shall—

(1) preside over the Office of the Chief of Naval Operations;

(2) transmit the plans and recommendations of the Office of the Chief of Naval Operations to the Secretary and advise the Secretary with regard to such plans and recommendations;

(3) after approval of the plans or recommendations of the Office of the Chief of Naval Operations by the Secretary, act as the agent of the Secretary in carrying them into effect;

(4) exercise supervision, consistent with the authority assigned to commanders of unified or specified combatant commands under chapter 6 of this title, over such of the members and organizations of the Navy and the Marine Corps as the Secretary determines;

(5) perform the duties prescribed for him by section 171 of this title and other provisions of law; and

(6) perform such other military duties, not otherwise assigned by law, as are assigned to him by the President, the Secretary of Defense, or the Secretary of the Navy.

(e)(1) The Chief of Naval Operations shall also perform the duties prescribed for him as a member of the Joint Chiefs of Staff under section 151 of this title.

(2) To the extent that such action does not impair the independence of the Chief of Naval Operations in the performance of his duties as a member of the Joint Chiefs of Staff, the Chief of Naval Operations shall inform the Secretary regarding military advice rendered by members of the Joint Chiefs of Staff on matters affecting the Department of the Navy.

(3) Subject to the authority, direction, and control of the Secretary of Defense, the Chief of Naval Operations shall keep the Secretary of the Navy fully informed of significant military operations affecting the duties and responsibilities of the Secretary.

(Added P.L. 99–433, § 512(b), Oct. 1, 1986, 100 Stat. 1049 [formerly covered by § 5081] (former § 5033 repealed and now covered by § 5015); amended P.L. 100–456, § 519(a)(3), Sept. 29, 1988, 102 Stat. 1972).

[§ 5034. Repealed. P.L. 104–106, § 502(c), Feb. 10, 1996, 110 Stat. 293]

§ 5035. Vice Chief of Naval Operations

(a) There is a Vice Chief of Naval Operations, appointed by the President, by and with the advice and consent of the Senate, from officers on the active-duty list in the line of the Navy serving in grades above captain and eligible to command at sea.

(b) The Vice Chief of Naval Operations, while so serving, has the grade of admiral without vacating his permanent grade.

(c) The Vice Chief of Naval Operations has such authority and duties with respect to the Department of the Navy as the Chief of Naval Operations, with the approval of the Secretary of the Navy, may delegate to or prescribe for him. Orders issued by the Vice Chief of Naval Operations in performing such duties have the same effect as those issued by the Chief of Naval Operations.

(d) When there is a vacancy in the office of Chief of Naval Operations or during the absence or disability of the Chief of Naval Operations—

(1) the Vice Chief of Naval Operations shall perform the duties of the Chief of Naval Operations until a successor is appointed or the absence or disability ceases; or

(2) if there is a vacancy in the office of the Vice Chief of Naval Operations or the Vice Chief of Naval Operations is absent or disabled, unless the President directs otherwise, the

most senior officer of the Navy in the Office of the Chief of Naval Operations who is not absent or disabled and who is not restricted in performance of duty shall perform the duties of the Chief of Naval Operations until a successor to the Chief of Naval Operations or the Vice Chief of Naval Operations is appointed or until the absence or disability of the Chief of Naval Operations or Vice Chief of Naval Operations ceases, whichever occurs first.

(Added P.L. 99–433, § 512(b), Oct. 1, 1986, 100 Stat. 1050 [formerly covered by § 5085] (former § 5035 repealed P.L. 85–599, 8(b)(2), Aug. 6, 1958).)

§ 5036. Deputy Chiefs of Naval Operations

(a) There are in the Office of the Chief of Naval Operations not more than five Deputy Chiefs of Naval Operations, detailed by the Secretary of the Navy from officers on the active-duty list in the line of the Navy serving in grades above captain.

(b) The Deputy Chiefs of Naval Operations are charged, under the direction of the Chief of Naval Operations, with the execution of the functions of their respective divisions. Orders issued by the Deputy Chiefs of Naval Operations in performing the duties assigned them are considered as coming from the Chief of Naval Operations.

(Added P.L. 99–433, § 512(b), Oct. 1, 1986, 100 Stat. 1051 [formerly covered by § 5086] (former § 5036 repealed and now covered by § 5017).)

§ 5037. Assistant Chiefs of Naval Operations

(a) There are in the Office of the Chief of Naval Operations not more than three Assistant Chiefs of Naval Operations, detailed by the Secretary of the Navy from officers on the active-duty list in the line of the Navy and officers on the active-duty list of the Marine Corps.

(b) The Assistant Chiefs of Naval Operations shall perform such duties as the Secretary of the Navy prescribes.

(Added P.L. 99–433, § 512(b), Oct. 1, 1986, 100 Stat. 1051 [formerly covered by § 5087].)

§ 5038. Director for Expeditionary Warfare

(a) One of the Directors within the Office of the Deputy Chief of Naval Operations for Resources, Warfare Requirements, and Assessments shall be the Director for Expeditionary Warfare who shall be detailed from officers on the active-duty list of the Marine Corps.

(b) An officer assigned to the position of Director for Expeditionary Warfare, while so serving, has the grade of major general.

(c) The principal duty of the Director for Expeditionary Warfare shall be to supervise the performance of all staff responsibilities of the Chief of Naval Operations regarding expeditionary warfare, including responsibilities regarding amphibious lift, mine warfare, naval fire support, and other missions essential to supporting expeditionary warfare.

(d) The Chief of Naval Operations shall transfer duties, responsibilities, and staff from other personnel within the Office of the Chief of Naval Operations as necessary to fully support the Director for Expeditionary Warfare.

(Added P.L. 102–484, § 935(b)(1), Oct. 23, 1992, 106 Stat. 2478; amended P.L. 103–35, § 201(c)(10), May 31, 1993, 107 Stat. 98; P.L. 103–160, § 944, Nov. 30, 1993, 107 Stat. 1737.)

CHAPTER 506—HEADQUARTERS, MARINE CORPS

Sec.
5041. Headquarters, Marine Corps: function; composition.
5042. Headquarters, Marine Corps: general duties.
5043. Commandant of the Marine Corps.
5044. Assistant Commandant of the Marine Corps.
5045. Deputy Commandants.
5046. Staff Judge Advocate to the Commandant of the Marine Corps.

§ 5041. Headquarters, Marine Corps: function; composition

(a) There is in the executive part of the Department of the Navy a Headquarters, Marine Corps. The function of the Headquarters, Marine Corps, is to assist the Secretary of the Navy in carrying out his responsibilities.

(b) The Headquarters, Marine Corps, is composed of the following:

(1) The Commandant of the Marine Corps.

(2) The Assistant Commandant of the Marine Corps.

(3) The Deputy Commandants.

(4) Other members of the Navy and Marine Corps assigned or detailed to the Headquarters, Marine Corps.

(5) Civilian employees in the Department of the Navy assigned or detailed to the Headquarters, Marine Corps.

(c) Except as otherwise specifically prescribed by law, the Headquarters, Marine Corps, shall be organized in such manner, and its members shall perform such duties and have such titles, as the Secretary may prescribe.

(Added P.L. 99–433, § 513(b), Oct. 1, 1986, 100 Stat. 1052; amended P.L. 106–398, § 1[902(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–224.)

§ 5042. Headquarters, Marine Corps: general duties

(a) The Headquarters, Marine Corps, shall furnish professional assistance to the Secretary, the Under Secretary, and the Assistant Secretaries of the Navy and to the Commandant of the Marine Corps.

(b) Under the authority, direction, and control of the Secretary of the Navy, the Headquarters, Marine Corps, shall—

(1) subject to subsections (c) and (d) of section 5014 of this title, prepare for such employment of the Marine Corps, and for such recruiting, organizing, supplying, equipping (including research and development), training, servicing, mobilizing, demobilizing, administering, and maintaining of the Marine Corps, as will assist in the execution of any power, duty, or function of the Secretary or the Commandant;

(2) investigate and report upon the efficiency of the Marine Corps and its preparation to support military operations by combatant commanders;

(3) prepare detailed instructions for the execution of approved plans and supervise the execution of those plans and instructions;

(4) as directed by the Secretary or the Commandant, coordinate the action of organizations of the Marine Corps; and

(5) perform such other duties, not otherwise assigned by law, as may be prescribed by the Secretary.

(Added P.L. 99–433, § 513(b), Oct. 1, 1986, 100 Stat. 1052.)

§ 5043. Commandant of the Marine Corps

(a)(1) There is a Commandant of the Marine Corps, appointed by the President, by and with the advice and consent of the Senate. The Commandant shall be appointed for a term of four years from officers on the active-duty list of the Marine Corps not below the grade of colonel. He serves at the pleasure of the President. In time of war or during a national emergency declared by Congress, he may be reappointed for a term of not more than four years.

(2) The President may appoint an officer as Commandant of the Marine Corps only if—

(A) the officer has had significant experience in joint duty assignments; and

(B) such experience includes at least one full tour of duty in a joint duty assignment (as defined in section 664(f) of this title) as a general officer.

(3) The President may waive paragraph (2) in the case of an officer if the President determines such action is necessary in the national interest.

(b) The Commandant of the Marine Corps, while so serving, has the grade of general without vacating his permanent grade.

[(c) Repealed. P.L. 104–106, § 502(c), Feb. 10, 1996, 110 Stat. 293.]

(d) Except as otherwise prescribed by law and subject to section 5013(f) of this title, the Commandant performs his duties under the authority, direction, and control of the Secretary of the Navy and is directly responsible to the Secretary.

(e) Subject to the authority, direction, and control of the Secretary of the Navy, the Commandant shall—

(1) preside over the Headquarters, Marine Corps;

(2) transmit the plans and recommendations of the Headquarters, Marine Corps, to the Secretary and advise the Secretary with regard to such plans and recommendations;

(3) after approval of the plans or recommendations of the Headquarters, Marine Corps, by the Secretary, act as the agent of the Secretary in carrying them into effect;

(4) exercise supervision, consistent with the authority assigned to commanders of unified or specified combatant commands under chapter 6 of this title, over such of the members and organizations of the Marine Corps and the Navy as the Secretary determines;

(5) perform the duties prescribed for him by section 171 of this title and other provisions of law; and

(6) perform such other military duties, not otherwise assigned by law, as are assigned to him by the President, the Secretary of Defense, or the Secretary of the Navy.

(f)(1) The Commandant shall also perform the duties prescribed for him as a member of the Joint Chiefs of Staff under section 151 of this title.

(2) To the extent that such action does not impair the independence of the Commandant in the performance of his duties as a member of the Joint Chiefs of Staff, the Commandant shall inform the Secretary regarding military advice rendered by members of the Joint Chiefs of Staff on matters affecting the Department of the Navy.

(3) Subject to the authority, direction, and control of the Secretary of Defense, the Commandant shall keep the Secretary of the Navy fully informed of significant military operations affecting the duties and responsibilities of the Secretary.

(Added P.L. 99–433, § 513(b), Oct. 1, 1986, 100 Stat. 1052 [formerly covered by § 5201]; amended P.L. 100–456, § 519(a)(3), Sept. 29, 1988, 102 Stat. 1972; P.L. 102–190, § 505(b), Dec. 5, 1991, 105 Stat. 1358; P.L. 104–106, § 502(c), Feb. 10, 1996, 110 Stat. 293.)

§ 5044. Assistant Commandant of the Marine Corps

(a) There is an Assistant Commandant of the Marine Corps, appointed by the President, by and with the advice and consent of the Senate, from officers on the active-duty list of the Marine Corps not restricted in the performance of duty.

(b) The Assistant Commandant of the Marine Corps, while so serving, has the grade of general without vacating his permanent grade.

(c) The Assistant Commandant has such authority and duties with respect to the Marine Corps as the Commandant, with the approval of the Secretary of the Navy, may delegate to or prescribe for him. Orders issued by the Assistant Commandant in performing such duties have the same effect as those issued by the Commandant.

(d) When there is a vacancy in the office of Commandant of the Marine Corps, or during the absence or disability of the Commandant—

(1) the Assistant Commandant of the Marine Corps shall perform the duties of the Commandant until a successor is appointed or the absence or disability ceases; or

(2) if there is a vacancy in the office of the Assistant Commandant of the Marine Corps or the Assistant Commandant is absent or disabled, unless the President directs otherwise, the most senior officer of the Marine Corps in the Headquarters, Marine Corps, who is not absent or disabled and who is not restricted in performance of duty shall perform the duties of the Commandant until a successor to the Commandant or the Assistant Commandant is appointed or until the absence or disability of the Commandant or Assistant Commandant ceases, whichever occurs first.

(Added P.L. 99–433, § 513(b), Oct. 1, 1986, 100 Stat. 1054 [formerly covered by § 5202].)

§ 5045. Deputy Commandants

There are in the Headquarters, Marine Corps, not more than five Deputy Commandants, detailed by the Secretary of the Navy from officers on the active-duty list of the Marine Corps.

(Added P.L. 99–433, § 513(b), Oct. 1, 1986, 100 Stat. 1054; amended P.L. 106–398, § 1[902(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–224.)

§ 5046. Staff Judge Advocate to the Commandant of the Marine Corps

(a) An officer of the Marine Corps who is a judge advocate and a member of the bar of a Federal court or the highest court of a State or territory and who has had at least eight years of experience in legal duties as a commissioned officer may be detailed as Staff Judge Advocate to the Commandant of the Marine Corps. If an officer appointed as the Staff Judge Advocate to the Commandant of the Marine Corps holds a lower regular grade, the officer shall be appointed in the regular grade of brigadier general.

(b) Under regulations prescribed by the Secretary of Defense, the Secretary of the Navy, in selecting an officer for recommendation to the President for appointment as the Staff Judge Advocate to the Commandant of the Marine Corps, shall ensure that the officer selected is recommended by a board of officers that, insofar as practicable, is subject to the procedures applicable to selection boards convened under chapter 36 of this title.

(Added P.L. 99–661, § 509(a), Nov. 14, 1986, 100 Stat. 3868; amended P.L. 103–337, § 504(b)(4), Oct. 5, 1994, 108 Stat. 2751.)

CHAPTER 507—COMPOSITION OF THE DEPARTMENT OF THE NAVY

Sec.
5061. Department of the Navy: composition.
5062. United States Navy: composition; functions.
5063. United States Marine Corps: composition; functions.

§ 5061. Department of the Navy: composition

The Department of the Navy is composed of the following:

(1) The Office of the Secretary of the Navy.

(2) The Office of the Chief of Naval Operations.

(3) The Headquarters, Marine Corps.

(4) The entire operating forces, including naval aviation, of the Navy and of the Marine Corps, and the reserve components of those operating forces.

(5) All field activities, headquarters, forces, bases, installations, activities, and functions under the control or supervision of the Secretary of the Navy.

(6) The Coast Guard when it is operating as a service in the Navy.

(Added P.L. 99–433, § 511(b)(1), Oct. 1, 1986, 100 Stat. 1043 (former § 5061 repealed).)

§ 5062. United States Navy: composition; functions

(a) The Navy, within the Department of the Navy, includes, in general, naval combat and service forces and such aviation as may be organic therein. The Navy shall be organized, trained, and equipped primarily for prompt and sustained combat incident to operations at sea. It is responsible for the preparation of naval forces necessary for the effective prosecution of war except as otherwise assigned and, in accordance with integrated joint mobilization plans, for the expansion of the peacetime components of the Navy to meet the needs of war.

(b) All naval aviation shall be integrated with the naval service as part thereof within the Department of the Navy. Naval aviation consists of combat and service and training forces, and includes land-based naval aviation, air transport essential for naval operations, all air weapons and air techniques involved in the operations and activities of the Navy, and the entire remainder of the aeronautical organization of the Navy, together with the personnel necessary therefor.

(c) The Navy shall develop aircraft, weapons, tactics, technique, organization, and equipment of naval combat and service elements. Matters of joint concern as to these functions shall be coordinated between the Army, the Air Force, and the Navy.

(Aug. 10, 1956, § 5012, ch. 1041, 70A Stat. 277; transferred, redesignated § 5062, and amended Oct. 1, 1986, P.L. 99–433, § 511 (b)(3), (b)(4), 100 Stat. 1043 (former § 5062 repealed P.L. 87–649, § 14c(11), Sept. 7, 1962).)

§ 5063. United States Marine Corps: composition; functions

(a) The Marine Corps, within the Department of the Navy, shall be so organized as to include not less than three combat divisions and three air wings, and such other land combat, aviation, and other services as may be organic therein. The Marine Corps shall be organized, trained, and equipped to provide fleet marine forces of combined arms, together with supporting air components, for service with the fleet in the seizure or defense of advanced naval bases and for the conduct of such land operations as may be essential to the prosecution of a naval campaign. In addition, the Marine Corps shall provide detachments and organizations for service on armed vessels of the Navy, shall provide security detachments for the protection of naval property at naval stations and bases, and shall perform such other duties as the President may direct. However, these additional duties may not detract from or interfere with the operations for which the Marine Corps is primarily organized.

(b) The Marine Corps shall develop, in coordination with the Army and the Air Force, those phases of amphibious operations that pertain to the tactics, technique, and equipment used by landing forces.

(c) The Marine Corps is responsible, in accordance with integrated joint mobilization plans, for the expansion of peacetime components of the Marine Corps to meet the needs of war.

(Aug. 10, 1956, § 5013, ch. 1041, 70A Stat. 278; transferred and redesignated § 5063, Oct. 1, 1986, P.L. 99–433, § 511(b)(3), 100 Stat. 1043, (former §§ 5063 & 5064 repealed).)

[CHAPTER 509—REPEALED]

[§§ 5081–5087. Repealed, P.L. 99–433, § 512(a), Oct. 1, 1986, 100 Stat. 1048]

[§ 5088. Transferred to § 5020]

[CHAPTER 511—REPEALED]

[§§ 5111, 5112. Repealed. P.L. 89–718, § 34(a), Nov. 2, 1966, 80 Stat. 1119]

CHAPTER 513—BUREAUS; OFFICE OF THE JUDGE ADVOCATE GENERAL

Sec.
5131. Bureaus: names; location.
5132. Bureaus: distribution of business; orders; records; expenses.
5133. Bureau Chiefs: rank; pay and allowances; retirement.
[5134. Repealed.]
5135. Bureau Chiefs: succession to duties.
[5136. Repealed.]
5137. Bureau of Medicine and Surgery: Chief; Deputy Chief.
5138. Bureau of Medicine and Surgery: Dental Division; Chief; functions.
5139. Appointment of chiropractors in the Medical Service Corps.
[5140. Repealed.]
5141. Bureau of Naval Personnel: Chief of Naval Personnel; Deputy Chief of Naval Personnel.
5142. Chaplain Corps and Chief of Chaplains.
5142a. Deputy Chief of Chaplains.
5143. Office of Naval Reserve: appointment of Chief.
5144. Office of Marine Forces Reserve: appointment of Commander.
[5145 to 5147. Repealed.]
5148. Judge Advocate General's Corps: Office of the Judge Advocate General; Judge Advocate General; appointment, term, emoluments, duties.
5149. Office of the Judge Advocate General: Deputy Judge Advocate General; Assistant Judge Advocates General.
5150. Staff Corps of the Navy.
[5151 to 5153. Transferred to chapter 503.]
[5154. Repealed.]
[5155. Transferred.]

§ 5131. Bureaus: names; location

There are in the executive part of the Department of the Navy the following bureaus:

(1) Bureau of Medicine and Surgery.

(2) Bureau of Naval Personnel.

(Aug. 10, 1956, ch. 1041, 70A Stat. 285; Aug. 18, 1959, P.L. 86–174, §§ 1(1), 2(1), 73 Stat. 395; Nov. 2, 1966, P.L. 89–718, § 35(1), 80 Stat. 1120.)

§ 5132. Bureaus: distribution of business; orders; records; expenses

(a) Except as otherwise provided by law, the business of the executive part of the Department of the Navy shall be distributed among the bureaus as the Secretary of the Navy considers expedient and proper.

(b) Each bureau shall perform its duties under the authority of the Secretary, and its orders are considered as coming from the Secretary.

(c) Under the Secretary, each bureau has custody and charge of its records and accounts.

(d) Each bureau shall furnish to the Secretary estimates for its specific, general, and contingent expenses.

(Aug. 10, 1956, ch. 1041, 70A Stat. 285.)

§ 5133. Bureau Chiefs: rank; pay and allowances; retirement

(a) Unless appointed to a higher grade under another provision of law, an officer of the Navy, while serving as a chief of bureau, has the rank of rear admiral.

(b) Except for an officer who is serving or has served in the grade of vice admiral under section 5137(a) of this title, an officer who is retired while serving as a chief of bureau, or who, after serving at least two and one-half years as chief of bureau, is retired after completion of that service while serving in a lower rank or grade, may, in the discretion of the President, be retired with the grade of rear admiral, and with retired pay based on that grade. An officer who is serving or has served in the grade of vice admiral under section 5137(a) of this title may, upon retirement, be appointed by the President, by and with the advice and consent of the Senate, to the highest grade held by him while on the active list or active-duty list and with retired pay based on that grade.

(c) Except in time of war, any officer of a staff corps who has served as a chief of bureau for a full term is exempt from sea duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 285; Aug. 18, 1959, P.L. 86–174, § 2(2), 73 Stat. 396; Sept. 7, 1962, P.L. 87–649, § 14c(15), 76 Stat. 501; Oct. 22, 1965, P.L. 89–288, § 3, 79 Stat. 1050; Nov. 2, 1966, P.L. 89–718, § 35(2)–(4), 80 Stat. 1120; Dec. 12, 1980, P.L. 96–513, § 503(9), 94 Stat. 2911; Oct. 5, 1994, P.L. 103–337, § 504(b)(3), (5), 108 Stat. 2751.)

[§ 5134. Repealed. P.L. 87–649, § 14c(16), Sept. 7, 1962, 76 Stat. 501]

§ 5135. Bureau Chiefs: succession to duties

(a) When there is a vacancy in the office of chief of a bureau, or during the absence or disability of the chief of a bureau, the deputy chief of that bureau, unless otherwise directed by the President, shall perform the duties of the chief until a successor is appointed or the absence or disability ceases.

(b) When subsection (a) cannot be complied with because of the absence or disability of the deputy chief of the bureau, the heads of the major divisions of the bureau, in the order directed by the Secretary of the Navy, shall perform the duties of the chief, unless otherwise directed by the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 286.)

[§ 5136. Repealed. P.L. 86–174, § 2(3), Aug. 18, 1959, 73 Stat. 396]

§ 5137. Bureau of Medicine and Surgery: Chief; Deputy Chief

(a) The Chief of the Bureau of Medicine and Surgery shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years, from officers on the active-duty list of the Navy in any corps of the Navy Medical Department. He has the title of Surgeon General. The Surgeon General, while so serving has the grade of vice admiral.

(b) An officer on the active-duty list of the Navy who is qualified to be the Chief of the Bureau of Medicine and Surgery may be detailed as Deputy Chief of the Bureau of Medicine and Surgery.

(Aug. 10, 1956, ch. 1041, 70A Stat. 286; Oct. 22, 1965, P.L. 89–288, § 4, 79 Stat. 1050; Dec. 12, 1980, P.L. 96–513, § 503(10), 94 Stat. 2912; Feb. 10, 1996, P.L. 104–106, § 506(b), 110 Stat. 296.)

§ 5138. Bureau of Medicine and Surgery: Dental Division; Chief; functions

(a) There is a Dental Division in the Bureau of Medicine and Surgery. An officer of the Dental Corps not below the grade of rear admiral (lower half) shall be detailed as Chief of the Dental Division.

(b) The Chief of the Dental Division is entitled to the same privileges of retirement as provided for chiefs of bureaus in section 5133 of this title.

(c) The dental functions of the Bureau of Medicine and Surgery shall be so defined and prescribed by Bureau directives, and if necessary by regulations of the Secretary of the Navy, that all such functions will be under the direction of the Dental Division. All matters relating to dentistry shall be referred to that Division.

(d) The Dental Division shall—

(1) establish professional standards and policies for dental practice;

(2) conduct inspections and surveys for maintenance of such standards;

(3) initiate and recommend action pertaining to complements, appointments, advancement, training assignment, and transfer of dental personnel; and

(4) serve as the advisory agency for the Bureau on all matters relating directly to dentistry.

(Aug. 10, 1956, ch. 1041, 70A Stat. 286; Sept. 7, 1962, P.L. 87–649, § 14c(17), 76 Stat. 501; Dec. 12, 1980, P.L. 96–513, § 342, 94 Stat. 2901; Dec. 1, 1981, P.L. 97–86, § 405(b)(1), 95 Stat. 1105; Nov. 8, 1985, P.L. 99–145, § 514(b)(1), 99 Stat. 628.)

§ 5139. Appointment of chiropractors in the Medical Service Corps

Chiropractors who are qualified under regulations prescribed by the Secretary of the Navy may be appointed as commissioned officers in the Medical Service Corps of the Navy.

(Added P.L. 102–484, § 505(b)(1), Oct. 23, 1992, 106 Stat. 2404.)

[§ 5140. Repealed. P.L. 96–513, § 352(a), Dec. 12, 1980, 94 Stat. 2902]

§ 5141. Bureau of Naval Personnel: Chief of Naval Personnel; Deputy Chief of Naval Personnel

(a) The Chief of the Bureau of Naval Personnel shall be known as the Chief of Naval Personnel. The Chief of Naval Personnel shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years, from officers on the active-duty list in the line of the Navy not below the grade of commander.

(b) The Deputy Chief of the Bureau of Naval Personnel shall be known as the Deputy Chief of Naval Personnel. An officer on

the active-duty list in the line of the Navy not below the grade of commander may be detailed as Deputy Chief of Naval Personnel.

(Aug. 10, 1956, ch. 1041, 70A Stat. 287; Dec. 12, 1980, P.L. 96–513, § 503(11), 94 Stat. 2912.)

§ 5142. Chaplain Corps and Chief of Chaplains

(a) The Chaplain Corps is a staff corps of the Navy and shall be organized in accordance with regulations prescribed by the Secretary of the Navy.

(b) There is in the executive part of the Department of the Navy the office of the Chief of Chaplains of the Navy. The Chief of Chaplains shall be appointed by the President, by and with the advice and consent of the Senate, from officers of the Chaplain Corps in the grade of commander or above who are serving on active duty and who have served on active duty in the Chaplain Corps for at least eight years.

(c) An officer appointed as the Chief of Chaplains shall be appointed for a term of four years. However, the President may terminate or extend the appointment at any time.

(d)(1) The Chief of Chaplains shall perform such duties as may be prescribed by the Secretary of the Navy and by law.

(2) The Chief of Chaplains shall, with respect to all duties pertaining to the procurement, distribution, and support of personnel of the Chaplain Corps, report to and be supported by the Chief of Naval Personnel.

(e) The Chief of Chaplains of the Navy is entitled to the same rank and privileges of retirement as provided for chiefs of bureaus in section 5133 of this title.

(Added Sept. 8, 1980, P.L. 96–343, § 11(a), 94 Stat. 1130; amended P.L. 105–85, § 504(c)(1), Nov. 18, 1997, 111 Stat. 1725.)

§ 5142a. Deputy Chief of Chaplains

The Secretary of the Navy may detail as the Deputy Chief of Chaplains an officer of the Chaplain Corps in the grade of commander or above who is on active duty and who has served on active duty in the Chaplain Corps for at least eight years.

(Added P.L. 96–343, § 11(a), Sept. 8, 1980, 94 Stat. 1130; amended P.L. 105–85, § 504(c)(2), Nov. 18, 1997, 111 Stat. 1725.)

§ 5143. Office of Naval Reserve: appointment of Chief

(a) ESTABLISHMENT OF OFFICE: CHIEF OF NAVAL RESERVE.—There is in the executive part of the Department of the Navy, on the staff of the Chief of Naval Operations, an Office of the Naval Reserve, which is headed by a Chief of Naval Reserve. The Chief of Naval Reserve—

(1) is the principal adviser on Naval Reserve matters to the Chief of Naval Operations; and

(2) is the commander of the Naval Reserve Force.

(b) APPOINTMENT.—(1) The President, by and with the advice and consent of the Senate, shall appoint the Chief of Naval Reserve from flag officers of the Navy (as defined in section 5001(1)) who have had at least 10 years of commissioned service.

(2) The Secretary of Defense may not recommend an officer to the President for appointment as Chief of Naval Reserve unless the officer—

(A) is recommended by the Secretary of the Navy; and

(B) is determined by the Chairman of the Joint Chiefs of Staff, in accordance with criteria and as a result of a process established by the Chairman, to have significant joint duty experience.

(3) An officer on active duty for service as the Chief of Naval Reserve shall be counted for purposes of the grade limitations under sections 525 and 526 of this title.

(4) Until October 1, 2003, the Secretary of Defense may waive subparagraph (B) of paragraph (2) with respect to the appointment of an officer as Chief of Naval Reserve if the Secretary of the Navy requests the waiver and, in the judgment of the Secretary of Defense—

(A) the officer is qualified for service in the position; and

(B) the waiver is necessary for the good of the service.

Any such waiver shall be made on a case-by-case basis.

(c) TERM; REAPPOINTMENT; GRADE.—(1) The Chief of Naval Reserve is appointed for a term determined by the Chief of Naval Operations, normally four years, but may be removed for cause at any time. An officer serving as Chief of Naval Reserve may be reappointed for one additional term of up to four years.

(2) The Chief of Naval Reserve, while so serving, holds the grade of vice admiral.

(d) BUDGET.—The Chief of Naval Reserve is the official within the executive part of the Department of the Navy who, subject to the authority, direction, and control of the Secretary of the Navy and the Chief of Naval Operations, is responsible for preparation, justification, and execution of the personnel, operation and maintenance, and construction budgets for the Naval Reserve. As such, the Chief of Naval Reserve is the director and functional manager of appropriations made for the Naval Reserve in those areas.

(e) ANNUAL REPORT.—(1) The Chief of Naval Reserve shall submit to the Secretary of Defense, through the Secretary of the Navy, an annual report on the state of the Naval Reserve and the ability of the Naval Reserve to meet its missions. The report shall be prepared in conjunction with the Chief of Naval Operations and may be submitted in classified and unclassified versions.

(2) The Secretary of Defense shall transmit the annual report of the Chief of Naval Reserve under paragraph (1) to Congress, together with such comments on the report as the Secretary considers appropriate. The report shall be transmitted at the same time each year that the annual report of the Secretary under section 113 of this title is submitted to Congress.

(Added P.L. 104–201, § 1212(b)(1), Sept. 23, 1996, 110 Stat. 2691; amended P.L. 106–65, § 554(c), Oct. 5, 1999, 113 Stat. 617; P.L. 106–398, § 1[507(b), 1087(a)(18)], Oct. 30, 2000, 114 Stat. 1654, 1654A–103, 1654A–291.)

§ 5144. Office of Marine Forces Reserve: appointment of Commander

(a) ESTABLISHMENT OF OFFICE; COMMANDER, MARINE FORCES RESERVE.—There is in the executive part of the Department of the Navy an Office of the Marine Forces Reserve, which is headed by the Commander, Marine Forces Reserve. The Commander, Marine

Forces Reserve, is the principal adviser to the Commandant on Marine Forces Reserve matters.

(b) APPOINTMENT.—(1) The President, by and with the advice and consent of the Senate, shall appoint the Commander, Marine Forces Reserve, from general officers of the Marine Corps (as defined in section 5001(2)) who have had at least 10 years of commissioned service.

(2) The Secretary of Defense may not recommend an officer to the President for appointment as Commander, Marine Forces Reserve, unless the officer—

(A) is recommended by the Secretary of the Navy; and

(B) is determined by the Chairman of the Joint Chiefs of Staff, in accordance with criteria and as a result of a process established by the Chairman, to have significant joint duty experience.

(3) An officer on active duty for service as the Commander, Marine Forces Reserve, shall be counted for purposes of the grade limitations under sections 525 and 526 of this title.

(4) Until October 1, 2003, the Secretary of Defense may waive subparagraph (B) of paragraph (2) with respect to the appointment of an officer as Commander, Marine Forces Reserve, if the Secretary of the Navy requests the waiver and, in the judgment of the Secretary of Defense—

(A) the officer is qualified for service in the position; and

(B) the waiver is necessary for the good of the service.

Any such waiver shall be made on a case-by-case basis.

(c) TERM; REAPPOINTMENT; GRADE.—(1) The Commander, Marine Forces Reserve, is appointed for a term determined by the Commandant of the Marine Corps, normally four years, but may be removed for cause at any time. An officer serving as Commander, Marine Forces Reserve, may be reappointed for one additional term of up to four years.

(2) The Commander, Marine Forces Reserve, while so serving, holds the grade of lieutenant general.

(d) ANNUAL REPORT.—(1) The Commander, Marine Forces Reserve, shall submit to the Secretary of Defense, through the Secretary of the Navy, an annual report on the state of the Marine Corps Reserve and the ability of the Marine Corps Reserve to meet its missions. The report shall be prepared in conjunction with the Commandant of the Marine Corps and may be submitted in classified and unclassified versions.

(2) The Secretary of Defense shall transmit the annual report of the Commander, Marine Forces Reserve, under paragraph (1) to Congress, together with such comments on the report as the Secretary considers appropriate. The report shall be transmitted at the same time each year that the annual report of the Secretary under section 113 of this title is submitted to Congress.

(Added P.L. 104–201, § 1212(c)(1), Sept. 23, 1996, 110 Stat. 2692; amended P.L. 106–65, § 554(d), Oct. 5, 1999, 113 Stat. 617; P.L. 106–398, § 1[507(c), 1087(a)(19)], Oct. 30, 2000, 114 Stat. 1654, 1654A–103, 1654A–291.)

[§§ 5145 to 5147. Repealed. P.L. 89–718, § 35(5), Nov. 2, 1966, 80 Stat. 1120]

§ 5148. Judge Advocate General's Corps: Office of the Judge Advocate General; Judge Advocate General; appointment, term, emoluments, duties

(a) The Judge Advocate General's Corps is a Staff Corps of the Navy, and shall be organized in accordance with regulations prescribed by the Secretary of the Navy.

(b) There is in the executive part of the Department of the Navy the Office of the Judge Advocate General of the Navy. The Judge Advocate General shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. He shall be appointed from judge advocates of the Navy or the Marine Corps who are members of the bar of a Federal court or the highest court of a State or Territory and who have had at least eight years of experience in legal duties as commissioned officers. If an officer appointed as the Judge Advocate General holds a lower regular grade, the officer shall be appointed in the regular grade of rear admiral or major general, as appropriate.

(c) Under regulations prescribed by the Secretary of Defense, the Secretary of the Navy, in selecting an officer for recommendation to the President for appointment as the Judge Advocate General, shall ensure that the officer selected is recommended by a board of officers that, insofar as practicable, is subject to the procedures applicable to selection boards convened under chapter 36 of this title.

(d) The Judge Advocate General of the Navy, under the direction of the Secretary of the Navy, shall—

(1) perform duties relating to legal matters arising in the Department of the Navy as may be assigned to him;

(2) perform the functions and duties and exercise the powers prescribed for the Judge Advocate General in chapter 47 of this title;

(3) receive, revise, and have recorded the proceedings of boards for the examination of officers of the naval service for promotion and retirement; and

(4) perform such other duties as may be assigned to him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 289; Sept. 7, 1962, P.L. 87–649, § 14c(20), 76 Stat. 501; Dec. 8, 1967, P.L. 90–179, § 2(1), 81 Stat. 546; Dec. 12, 1980, P.L. 96–513, § 343, 94 Stat. 2901; Oct. 5, 1994, P.L. 103–337, § 504(b)(1), 108 Stat. 2750.)

§ 5149. Office of the Judge Advocate General: Deputy Judge Advocate General; Assistant Judge Advocates General

(a)(1) There is a Deputy Judge Advocate General of the Navy who is appointed by the President, by and with the advice and consent of the Senate, from among judge advocates of the Navy and Marine Corps who have the qualifications prescribed for the Judge Advocate General. If an officer appointed as the Deputy Judge Advocate General holds a lower regular grade, the officer shall be appointed in the regular grade of rear admiral or major general, as appropriate.

(2) Under regulations prescribed by the Secretary of Defense, the Secretary of the Navy, in selecting an officer for recommendation to the President for appointment as the Deputy Judge Advocate General, shall ensure that the officer selected is recommended by a board of officers that, insofar as practicable, is subject to the procedures applicable to selection boards convened under chapter 36 of this title.

(b) An officer of the Judge Advocate General's Corps who has the qualifications prescribed for the Judge Advocate General in section 5148(b) of this title may be detailed as Assistant Judge Advocate General of the Navy. While so serving, a judge advocate who holds a grade lower than rear admiral (lower half) shall hold the grade of rear admiral (lower half), if he is appointed to that grade by the President, by and with the advice and consent of the Senate. An officer who is retired while serving as Assistant Judge Advocate General of the Navy under this subsection or who, after serving at least twelve months as Assistant Judge Advocate General of the Navy, is retired after completion of that service while serving in a lower rank or grade, may, in the discretion of the President, be retired with the rank and grade of commodore. If he is retired as a commodore, he is entitled to the retired pay of that grade, unless entitled to higher pay under another provision of law.

(c) A judge advocate of the Marine Corps who has the qualifications prescribed for the Judge Advocate General in section 5148(b) of this title may be detailed as Assistant Judge Advocate General of the Navy. While so serving, a judge advocate who holds a grade lower than brigadier general shall hold the grade of brigadier general, if he is appointed to that grade by the President, by and with the advice and consent of the Senate. An officer who is retired while serving as Assistant Judge Advocate General of the Navy under this subsection or who, after serving at least twelve months as Assistant Judge Advocate General of the Navy, is retired after completion of that service while serving in a lower rank or grade, may, in the discretion of the President, be retired with the rank and grade of brigadier general. If he is retired as a brigadier general, he is entitled to the retired pay of that grade, unless entitled to higher pay under another provision of law.

(d) When there is a vacancy in the Office of the Judge Advocate General, or during the absence or disability of the Judge Advocate General, the Deputy Judge Advocate General shall perform the duties of the Judge Advocate General until a successor is appointed or the absence or disability ceases.

(e) When subsection (d) cannot be complied with because of the absence or disability of the Deputy Judge Advocate General, the Assistant Judge Advocates General, in the order directed by the Secretary of the Navy, shall perform the duties of the Judge Advocate General.

(Aug. 10, 1956, ch. 1041, 70A Stat. 290; Sept. 2, 1958, P.L. 85–861, § 33(a)(28), 72 Stat. 1566; Sept. 7, 1962, P.L. 87–649, § 14c(21), 76 Stat. 501; Nov. 2, 1966, P.L. 89–718, § 36, 80 Stat. 1120; Dec. 8, 1967, P.L. 90–179, § 2(2), 81 Stat. 546; Oct. 22, 1968, P.L. 90–623, § 2(9), 82 Stat. 1314; Dec. 12, 1980, P.L. 96–513, § 503(13), 94 Stat. 2912; Dec. 1, 1981, P.L. 97–86, § 405(b)(1), 95 Stat. 1105; Nov. 8, 1985, P.L. 99–145, § 514(b)(1), 99 Stat. 628; Nov. 14, 1986, P.L. 99–661, § 508(b), 100 Stat. 3867; Oct. 5, 1994, P.L. 103–337, § 504(b)(2), 108 Stat. 2751.)

§ 5150. Staff corps of the Navy

(a) The staff corps of the Navy are—

(1) the Medical Corps;

(2) the Dental Corps;

(3) the Judge Advocate General's Corps;

(4) the Chaplain Corps; and

(5) such other staff corps as may be established by the Secretary of the Navy under subsection (b).

(b)(1) The Secretary of the Navy may establish staff corps of the Navy in addition to the Medical Corps, the Dental Corps, the Judge Advocate General's Corps, and the Chaplain Corps. The Secretary may designate commissioned officers in, and may assign members to, any such staff corps.

(2) Subject to subsection (c), the Secretary of the Navy may provide for the appointment of the chief of any staff corps established under this subsection.

(c) The Secretary of the Navy, whenever the needs of the service require, may convene a selection board under section 611(a) of this title to select an officer in the Nurse Corps or in the Medical Service Corps (if such corps has been established under subsection (a)) for promotion to the grade of rear admiral (lower half). An officer promoted pursuant to such a selection shall be appointed by the Secretary to the position of Director of the Nurse Corps or Director of the Medical Service Corps, respectively, for a term of four years, to serve at the pleasure of the Secretary. For the purpose of computing the total number of flag officers in the staff corps of the Navy under section 526 of this title, an officer so appointed shall be considered an additional number in grade.

(Added P.L. 96–513, § 351, Dec. 12, 1980, 94 Stat. 2902, § 5155; amended P.L. 97–22, § 6(a), July 10, 1981, 95 Stat. 129; P.L. 97–86, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; redesignated § 5150 P.L. 99–433, § 514(a)(2), Oct. 1, 1986, 100 Stat. 1054 (former § 5150 transferred and redesignated as § 5021); amended P.L. 99–661, § 1343(a)(23), Nov. 14, 1986, 100 Stat. 3994; P.L. 102–190, § 1061(a)(22)(A), Dec. 5, 1991, 105 Stat. 1473.)

[§§ 5151 to 5153. Transferred to §§ 5022 to 5024]

[§ 5154. Repealed. P.L. 89–718, § 35(5), Nov. 2, 1966, 80 Stat. 1120]

[§ 5155. Transferred to § 5150]

[CHAPTER 515—REPEALED]

[§§ 5201 to 5204. Repealed. P.L. 99–433, § 513(a), Oct. 1, 1986, 100 Stat. 1051 (now covered by chapter 506)]

[§ 5205. Repealed. P.L. 87–123, § 5(3), Aug. 3, 1961, 75 Stat. 264]

[§ 5206. Repealed. P.L. 96–513, § 344(b), Dec. 12, 1980, 94 Stat. 2901]

[CHAPTER 516—REPEALED]

[§§ 5221, 5222. Repealed. P.L. 95–82, § 611(a), Aug. 1, 1977, 91 Stat. 378]

[CHAPTER 517—REPEALED]

[§§ 5231 to 5234. Repealed. P.L. 96–513, § 331, Dec. 12, 1980, 94 Stat. 2896]

[CHAPTER 519—REPEALED]

[§§ 5251, 5252. Repealed. P.L. 103–337, § 1661(a)(3)(A), Oct. 5, 1994, 108 Stat. 2980]

PART II—PERSONNEL

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533.	Distribution in Grade	5441
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[§§ 5401 to 5409. Repealed. P.L. 96–513, § 311(a), Dec. 12, 1980, 94 Stat. 2889]

[§§ 5410, 5411. Repealed. P.L. 90–130, § 1(16), Nov. 8, 1967, 81 Stat. 376]

[§ 5412. Repealed. P.L. 96–513, § 311(a), Dec. 12, 1980, 94 Stat. 2889]

[§§ 5413, 5414. Repealed. P.L. 103–337, § 1662(a)(3), Oct. 5, 1994, 108 Stat. 2988]

[§ 5415. Repealed. P.L. 96–513, § 311(a), Dec. 12, 1980, 94 Stat. 2889]

[§ 5416. Repealed. P.L. 96–513, § 312, Dec. 12, 1980, 94 Stat. 2889]

[§ 5417. Repealed. P.L. 96–513, § 311(a), Dec. 12, 1980, 94 Stat. 2889]

CHAPTER 533—DISTRIBUTION IN GRADE

Sec.
5441. Prescribed number; vacancies.
[5442 to 5449. Repealed.]
5450. Regular Navy: retired flag officers on active duty.
5451. Suspension: preceding sections.
[5452 to 5458. Repealed.]

§ 5441. Prescribed number; vacancies

In this chapter, the term "prescribed number" or "number . . . prescribed" as applied to a grade, means the number of officers of a described corps, designation, or other category that shall be maintained in the grade concerned. Except as otherwise specifically provided, the actual number of officers in a grade may not exceed the prescribed number. Vacancies occur whenever, and to the extent that, the actual number falls below the prescribed number.

(Aug. 10, 1956, ch. 1041, 70A Stat. 299; Dec. 12, 1980, P.L. 96–513, § 313(a), 94 Stat. 2889; Nov. 29, 1989, P.L. 101–189, § 1622(e)(8), 103 Stat. 1605.)

[§§ 5442 to 5444. Repealed. P.L. 101–510, § 403(b)(2), Nov. 5, 1990, 104 Stat. 1545]

[§ 5445. Repealed. P.L. 96–513, § 313(d)(1), Dec. 12, 1980, 94 Stat. 2892]

[§ 5446. Repealed. P.L. 101–510, § 403(b)(2), Nov. 5, 1990, 104 Stat. 1545]

[§§ 5447 to 5449. Repealed. P.L. 96–513, § 313(d)(2)–(4), Dec. 12, 1980, 94 Stat. 2892]

§ 5450. Regular Navy: retired flag officers on active duty

Except in time of war or national emergency, not more than ten retired flag officers of the Regular Navy may be on active duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 312; Dec. 12, 1980, P.L. 96–513, § 503(21), 94 Stat. 2912.)

§ 5451. Suspension: preceding sections

The President, during a war or national emergency, may suspend any provision of the preceding sections of this chapter. Such a suspension may not continue beyond September 30 of the fiscal year following that in which the war or national emergency ends.

(Aug. 10, 1956, ch. 1041, 70A Stat. 312; Apr. 21, 1976, P.L. 94–273, § 2(3), 90 Stat. 375; Dec. 12, 1980, P.L. 96–513, § 503(22), 94 Stat. 2913; Dec. 5, 1991, P.L. 102–190, § 1061(a)(21), 105 Stat. 1473.)

[§ 5452. Repealed. P.L. 96–513, § 373(b), Dec. 12, 1980, 94 Stat. 2903]

[§ 5453. Repealed. P.L. 90–130, § 1(17)(F), Nov. 8, 1967, 81 Stat. 377]

[§ 5454. Repealed. P.L. 103–337, § 1662(a)(3), Oct. 5, 1994, 108 Stat. 2988]

[§ 5455. Repealed. P.L. 97–22, § 10(b)(6)(A), July 10, 1981, 95 Stat. 137]

[§§ 5456 to 5458. Repealed. P.L. 103–337, § 1662(a)(3), Oct. 5, 1994, 108 Stat. 2988]

CHAPTER 535—GRADE AND RANK OF OFFICERS

Sec.
5501. Navy: grades above chief warrant officer, W–5.
5502. Marine Corps: grades above chief warrant officer, W–5.
5503. Navy and Marine Corps: warrant officer grades.
[5504 to 5507. Repealed.]
5508. Rank of line and staff corps officers of the Navy and officers of the Marine Corps.

§ 5501. Navy: grades above chief warrant officer, W–5

The commissioned grades in the Navy above the grade of chief warrant officer, W–5, are the following:

(1) Admiral.
(2) Vice admiral.
(3) Rear admiral.
(4) Rear admiral (lower half).
(5) Captain.
(6) Commander.
(7) Lieutenant commander.
(8) Lieutenant.
(9) Lieutenant (junior grade).
(10) Ensign.

(Aug. 10, 1956, ch. 1041, 70A Stat. 314; Dec. 12, 1980, P.L. 96–513, § 301, 94 Stat. 2887; Dec. 1, 1981, P.L. 97–86, § 405(a), 95 Stat. 1105; Nov. 8, 1985, P.L. 99–145, § 514(a)(1), 99 Stat. 628; Dec. 5, 1991, P.L. 102–190, § 1131(8)(A), 105 Stat. 1506.)

§ 5502. Marine Corps: grades above chief warrant officer, W–5

The commissioned grades in the Marine Corps above the grade of chief warrant officer, W–5, are:

(1) General.
(2) Lieutenant general.
(3) Major general.
(4) Brigadier general.
(5) Colonel.
(6) Lieutenant colonel.
(7) Major.
(8) Captain.
(9) First lieutenant.
(10) Second lieutenant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 314; Dec. 5, 1991, P.L. 102–190, § 1131(8)(A), 105 Stat. 1506.)

§ 5503. Navy and Marine Corps: warrant officer grades

The warrant officer grades in the Navy and the Marine Corps are:

(1) Chief warrant officer, W–5.
(2) Chief warrant officer, W–4.
(3) Chief warrant officer, W–3.
(4) Chief warrant officer, W–2.
(5) Warrant officer, W–1.

(Aug. 10, 1956, ch. 1041, 70A Stat. 314; Dec. 5, 1991, P.L. 102–190, § 1131(9), 105 Stat. 1506.)

[§§ 5504, 5505. Repealed. P.L. 96–513, § 314, Dec. 12, 1980, 94 Stat. 2892]

[§ 5506. Repealed. P.L. 103–337, § 1673(d)(1), Oct. 5, 1994, 108 Stat. 3016]

[§ 5507. Repealed. P.L. 87–649, § 14c(26), Sept. 7, 1962, 76 Stat. 501]

§ 5508. Rank of line and staff corps officers of the Navy and officers of the Marine Corps

Except for an officer entitled to a rank higher than his grade, line and staff corps officers of the Navy serving in the same grade and officers of the Marine Corps serving in the corresponding grade rank among themselves according to their respective dates of rank in grade whether or not they are on an active-duty list.

(Aug. 10, 1956, ch. 1041, 70A Stat. 317; Dec. 8, 1967, P.L. 90–179, § 4, 81 Stat. 547; Dec. 12, 1980, P.L. 96–513, § 503(27), 94 Stat. 2913.)

CHAPTER 537—ENLISTMENTS

Sec.
[5531 to 5539. Repealed.]
5540. Expiration: rights of member.

[§§ 5531 to 5535. Repealed. P.L. 90–235, § 2(a)(3), (b), Jan. 2, 1968, 81 Stat. 756]

[§ 5536. Repealed. P.L. 85–861, § 36B(13), Sept. 2, 1958, 72 Stat. 1571]

[§§ 5537 to 5539. Repealed. P.L. 90–235, § 2(a)(3), Jan. 2, 1968, 81 Stat. 756]

§ 5540. Expiration: rights of member

(a) The senior officer present afloat in foreign waters shall send to the United States by Government or other transportation as soon as possible each enlisted member of the naval service who is serving on a naval vessel, whose term of enlistment has expired, and who desires to return to the United States. However, when the senior officer present afloat considers it essential to the public interest, he may retain such a member on active duty until the vessel returns to the United States.

(b) Each member retained under this section—

(1) shall be discharged not later than 30 days after his arrival in the United States; and

(2) except in time of war is entitled to an increase in basic pay of 25 percent.

(c) The substance of this section shall be included in the enlistment contract of each person enlisting in the naval service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 320.)

CHAPTER 539—ORIGINAL APPOINTMENTS

Sec.
[5571 to 5581. Repealed.]
5582. Regular Navy: transfers, line and staff corps.
[5583, 5584. Repealed.]
5585. Regular Marine Corps: order of filling vacancies in grade of second lieutenant.
[5586. Repealed.]
5587. Regular Navy: officers designated for engineering duty, aeronautical engineering duty, and special duty.
5587a. Regular Marine Corps: judge advocates.
[5588. Repealed.]
5589. Regular Navy and Regular Marine Corps: officers designated for limited duty.
[5590 to 5595. Repealed.]
5596. Navy and Marine Corps: temporary appointments of officers designated for limited duty.
[5597 to 5599. Repealed.]
[5600. Repealed.]
[5601. Repealed.]

[§§ 5571, 5572. Repealed. P.L. 96–513, § 321, Dec. 12, 1980, 94 Stat. 2892]

[§ 5573. Repealed. P.L. 96–513, § 322, Dec. 12, 1980, 94 Stat. 2892]

[§§ 5573a to 5580. Repealed. P.L. 96–513, § 321, Dec. 12, 1980, 94 Stat. 2892]

[§ 5581. Repealed. P.L. 96–513, § 373(c), Dec. 12, 1980, 94 Stat. 2903]

§ 5582. Regular Navy: transfers, line and staff corps

(a) A regular officer of the Navy in a staff corps in a grade not above lieutenant commander may be appointed in the line of the Navy to the same grade.

(b) A regular officer in the line of the Navy in a grade not above lieutenant commander may be appointed to the same grade in a staff corps under regulations prescribed by the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 324; Dec. 12, 1980, P.L. 96–513, § 373(d), 94 Stat. 2903.)

[§§ 5583, 5584. Repealed. P.L. 96–513, § 321, Dec. 12, 1980, 94 Stat. 2892]

§ 5585. Regular Marine Corps: order of filling vacancies in grade of second lieutenant

Vacancies on the active-duty list of the Marine Corps in the grade of second lieutenant shall be filled, so far as practicable, first, from members of the graduating class of the Naval Academy;

second, from meritorious noncommissioned officers of the Regular Marine Corps; and third, from other persons.

(Aug. 10, 1956, ch. 1041, 70A Stat. 324; Dec. 12, 1980, P.L. 96–513, § 503(29), 94 Stat. 2913.)

[§ 5586. Repealed. P.L. 96–513, § 321, Dec. 12, 1980, 94 Stat. 2892]

§ 5587. Regular Navy: officers designated for engineering duty, aeronautical engineering duty, and special duty

(a) Persons may be originally appointed in the line of the Navy as regular officers designated for engineering duty, aeronautical engineering duty, or special duty.

(b) With the approval of the Secretary, a regular officer in the line of the Navy may, upon his application, be designated for engineering duty, aeronautical engineering duty, or special duty.

(c) The types of engineering duty for which officers may be designated include ship engineering and ordnance engineering. The types of aeronautical engineering duty for which officers may be designated include aeronautical engineering and aviation maintenance. The types of special duty for which officers may be designated include communications, law, naval intelligence, photography, public affairs, psychology, geophysics, cryptography, and hydrography.

(d) Officers designated for engineering duty, aeronautical engineering duty, or special duty shall perform sea or shore duty appropriate to their special qualifications but may not succeed to command except on shore and then only as authorized by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 325; Dec. 8, 1967, P.L. 90–179, § 5(2), 81 Stat. 547; July 5, 1968, P.L. 90–386, § 1(5), 82 Stat. 293; Dec. 12, 1980, P.L. 96–513, § 324, 94 Stat. 2893.)

§ 5587a. Regular Marine Corps: judge advocates

With the approval of the Secretary of the Navy, any regular officer on the active-duty list of the Marine Corps who is qualified under section 827(b) of this title may, upon his application, be designated as a judge advocate.

(Added P.L. 90–179, § 5(3), Dec. 8, 1967, 81 Stat. 548; amended P.L. 96–513, § 503(30), Dec. 12, 1980, 94 Stat. 2913.)

[§ 5588. Repealed. P.L. 87–123, § 5(8), Aug. 3, 1961, 75 Stat. 265]

§ 5589. Regular Navy and Regular Marine Corps: officers designated for limited duty

(a) Original appointments as regular officers of the Navy in a grade below lieutenant commander in the line and in staff corps established by the Secretary of the Navy under section 5150(b) of this title and designated by the Secretary for the purposes of this section may be made from—

(1) warrant officers;

(2) chief petty officers; and

(3) first-class petty officers;

in the Regular Navy, for the performance of duty in the technical fields indicated by their warrants or ratings.

(b) Original appointments as regular officers of the Marine Corps in a grade below major may be made from—

(1) warrant officers;

(2) master sergeants; and

(3) technical sergeants;

in the Regular Marine Corps, for the performance of duty in the technical fields in which they are proficient.

(c)(1) An officer described in paragraph (2) may be given an original appointment as a regular officer of the Navy or the Marine Corps, as the case may be, in the grade, and with the date of rank in that grade, in which the officer is serving on the day before such original appointment.

(2) This subsection applies to an officer of the Navy and Marine Corps who—

(A) is on the active-duty list;

(B) holds a permanent enlisted or warrant officer grade;

(C) is designated for limited duty under subsection (a) of section 5596 of this title; and

(D) is serving in the grade of lieutenant commander or commander, or in the grade of major or lieutenant colonel, under a temporary appointment under subsection (d) of section 5596 of this title.

(d) To be eligible for an appointment under this section a member must have the qualifications specified in section 532(a) of this title and have completed at least 10 years of active naval service, excluding active duty for training in a reserve component.

(e) Each officer appointed under this section is known as an officer designated for limited duty. He may not suffer any reduction in the pay and allowances to which he was entitled at the time of his appointment because of his former permanent status.

(f) Any officer designated for limited duty, upon his application and upon determination by the Secretary of the Navy that he is qualified, may—

(1) if he is in the line of the Navy, be designated for engineering duty, aeronautical engineering duty, or special duty, or be assigned to unrestricted performance of duty;

(2) if he is in a staff corps of the Navy, be assigned to unrestricted performance of duty in that corps; or

(3) if he is in the Marine Corps, be assigned to unrestricted performance of duty.

When an officer is so designated or assigned, his status as an officer designated for limited duty terminates.

(g) The Secretary shall prescribe regulations for the appointment, designation, and assignment of officers under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 326; Aug. 3, 1961, P.L. 87–123, § 5(10), 75 Stat. 265; Dec. 12, 1980, P.L. 96–513, § 325, 94 Stat. 2893; Oct. 1, 1986, P.L. 99–433, § 514(c)(3), 100 Stat. 1055; Oct. 5, 1994, P.L. 103–337, § 502, 108 Stat. 2748.)

[§ 5590. Repealed. P.L. 96–513, § 373(e), Dec. 12, 1980, 94 Stat. 2903]

[§§ 5591 to 5595. Repealed. P.L. 96–513, § 323, Dec. 12, 1980, 94 Stat. 2893]

§ 5596. Navy and Marine Corps: temporary appointments of officers designated for limited duty

(a) Under such regulations as he may prescribe, the Secretary of the Navy may make temporary appointments of officers designated for limited duty in the Regular Navy in grades not above lieutenant and in the Regular Marine Corps in grades not above captain from sources authorized under section 5589 of this title. Such appointments shall be made by warrant if in the grade of warrant officer, W–1, and by commission if in a higher grade.

(b) Temporary appointments under this section do not change the permanent, probationary, or acting status of members so appointed, prejudice them in regard to promotion or appointment, or abridge their rights or benefits. A person receiving a temporary appointment under this section may not suffer any reduction in the pay and allowances to which he was entitled because of his permanent status at the time of his temporary appointment, or any reduction in the pay and allowances to which he was entitled under a prior temporary appointment in a lower grade.

(c) The following members of the naval service are ineligible for temporary appointments under this section:

(1) Retired members.

(2) Members of the Naval Reserve and the Marine Corps Reserve ordered to active duty for training.

(3) Members of the Naval Reserve and the Marine Corps Reserve ordered to active duty in connection with organizing, administering, recruiting, instructing, training, or drilling the Naval Reserve or the Marine Corps Reserve.

(4) Members of the Naval Reserve and the Marine Corps Reserve ordered to temporary active duty to prosecute special work.

(d) Officers designated for limited duty under subsection (a) may be temporarily appointed by the Secretary of the Navy in a higher grade not above commander in the Regular Navy or lieutenant colonel in the Regular Marine Corps under such regulations as the Secretary may prescribe. Regulations prescribed under this section shall to the greatest extent practicable conform to the procedures prescribed in chapter 36 of this title for selection for promotion and promotion to higher permanent grades.

(e) The Secretary of the Navy may terminate any appointment made under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 328; Dec. 12, 1980, P.L. 96–513, § 326, 94 Stat. 2894; Dec. 5, 1991, P.L. 102–190, § 1113(c), (d)(2)(A), 105 Stat. 1502.)

[§§ 5597 to 5599. Repealed. P.L. 96–513, § 327, Dec. 12, 1980, 94 Stat. 2894]

[§ 5600. Repealed. P.L. 104–106, § 1501(c)(26), Feb. 10, 1996, 110 Stat. 499]

[§ 5601. Repealed. P.L. 89–609, § 1(10), Sept. 30, 1966, 80 Stat. 853]

[CHAPTER 541—RUNNING MATES FOR RESERVE OFFICERS—REPEALED]

[§§ 5651 to 5664. Repealed. P.L. 96–513, § 332, Dec. 12, 1980, 94 Stat. 2897]

[§ 5665. Repealed effective Oct. 1, 1996. P.L. 103–337, § 1629(b)(1), Oct. 5, 1994, 108 Stat. 2963]

[§ 5666. Repealed. P.L. 96–513, § 332, Dec. 12, 1980, 94 Stat. 2897]

[CHAPTER 543—REPEALED]

[§§ 5701 to 5711. Repealed. P.L. 96–513, § 333, Dec. 12, 1980, 94 Stat. 2897]

CHAPTER 544—TEMPORARY APPOINTMENTS

Sec.
5721. Temporary promotions of certain Navy lieutenants.

§ 5721. Temporary promotions of certain Navy lieutenants

(a) PROMOTION AUTHORITY FOR CERTAIN OFFICERS WITH CRITICAL SKILLS.—An officer in the line of the Navy in the grade of lieutenant who—

(1) has a skill in which the Navy has a critical shortage of personnel (as determined by the Secretary of the Navy); and

(2) is serving in a position (as determined by the Secretary of the Navy) which (A) is designated to be held by a lieutenant commander, and (B) requires that an officer serving in such position have the skill possessed by such officer,

may be temporarily promoted to the grade of lieutenant commander under regulations to be prescribed by the Secretary of the Navy. Appointments under this section shall be made by the President, by and with the advice and consent of the Senate.

(b) STATUS OF OFFICERS APPOINTED.—(1) An appointment under this section does not change the position on the active-duty list or the permanent, probationary, or acting status of the officer so appointed, prejudice the officer in regard to other promotions or appointments, or abridge the rights or benefits of the officer.

(2) For the purposes of section 523 of this title, an officer holding an appointment under this section is considered as serving in the grade of lieutenant commander.

(c) BOARD RECOMMENDATION REQUIRED.—A temporary promotion under this section may be made only upon the recommendation of a board of officers convened by the Secretary of the Navy for the purpose of recommending officers for such promotions.

(d) ACCEPTANCE AND EFFECTIVE DATE OF APPOINTMENT.—Each appointment under this section, unless expressly declined, is, without formal acceptance, regarded as accepted on the date such appointment is made, and a member so appointed is entitled to the pay and allowances of the grade of lieutenant commander from the date the appointment is made.

(e) TERMINATION OF APPOINTMENT.—Unless sooner terminated, an appointment under this section terminates—

(1) on the date the officer who received the appointment is promoted to the permanent grade of lieutenant commander; or

(2) on the date the officer is detached from a position described in subsection (a)(2), unless the officer is on a promotion list to the permanent grade of lieutenant commander, in which case the appointment terminates on the date the officer is promoted to that grade.

(f) LIMITATION ON NUMBER OF ELIGIBLE POSITIONS.—(1) An appointment under this section may only be made for service in a

position designated by the Secretary of the Navy for purposes of this section. The number of positions so designated may not exceed 325.

(2) Whenever the Secretary makes a change to the positions designated under paragraph (1), the Secretary shall submit notice of the change in writing to Congress.

(Added P.L. 96–513, § 334, Dec. 12, 1980, 94 Stat. 2897; amended P.L. 98–94, § 403, Sept. 24, 1983, 97 Stat. 629; P.L. 98–525, § 514, Oct. 19, 1984, 98 Stat. 2522; P.L. 99–661, § 503, Nov. 14, 1986, 100 Stat. 3864; P.L. 100–180, § 501(a), Dec. 4, 1987, 101 Stat. 1085; P.L. 101–189, § 512(a), Nov. 29, 1989, 103 Stat. 1439; P.L. 102–484, § 507, Oct. 23, 1992, 106 Stat. 2405; P.L. 103–160, § 508(a), Nov. 30, 1993, 107 Stat. 1647; P.L. 104–106, § 508(a)–(b), (d), Feb. 10, 1996, 110 Stat. 296; P.L. 104–201, § 503, Sept. 23, 1996, 110 Stat. 2511.)

[CHAPTER 545—REPEALED]

[§§ 5751 to 5758. Repealed. P.L. 96–513, § 333, Dec. 12, 1980, 94 Stat. 2897]

[§ 5759. Repealed. P.L. 87–123, § 5(17), Aug. 3, 1961, 75 Stat. 266]

[§§ 5760 to 5773. Repealed. P.L. 96–513, § 333, Dec. 12, 1980, 94 Stat. 2897]

[§ 5774. Repealed. P.L. 90–130, § 1(19)(T), Nov. 8, 1967, 81 Stat. 379]

[§ 5775. Repealed. P.L. 87–649, § 14c(293), Sept. 7, 1962, 76 Stat. 501]

[§§ 5776 to 5793. Repealed. P.L. 96–513, § 333, Dec. 12, 1980, 94 Stat. 2897]

[CHAPTER 547—REPEALED]

[§§ 5861, 5862. Repealed. P.L. 96–513, § 333, Dec. 12, 1980, 94 Stat. 2897]

[§ 5863. Repealed. P.L. 85–861, § 36B(14), Sept. 2, 1958, 72 Stat. 1571]

[§§ 5864, 5865. Repealed. P.L. 96–513, § 333, Dec. 12, 1980, 94 Stat. 2897]

[§ 5866. Repealed. P.L. 85–861, § 36B(15), Sept. 2, 1958, 72 Stat. 1571]

[§ 5867. Repealed. P.L. 96–513, § 333, Dec. 12, 1980, 94 Stat. 2897]

[CHAPTER 549—RESERVE PROMOTIONS—REPEALED]

[§§ 5891 to 5906. Repealed effective Oct. 1, 1996. P.L. 103–337, § 1629(b)(1), Oct. 5, 1994, 108 Stat. 2963]

[§ 5907. Repealed. P.L. 87–649, § 14c(33), Sept. 7, 1962, 76 Stat. 501]

[§§ 5908 to 5912. Repealed effective Oct. 1, 1996. P.L. 103–337, § 1629(b)(1), Oct. 5, 1994, 108 Stat. 2963]

CHAPTER 551—OFFICERS IN COMMAND

Sec.
[5941. Repealed.]
5942. Aviation commands: eligibility.
5943. Naval shipyards.
5944. Marine Corps officers: limitation on power to command.
5945. Staff corps officers: limitation on power to command.
5946. Precedence accorded commanding officers.
5947. Requirement of exemplary conduct.
5948. Consular powers: senior officer present afloat.
5949. Policy as to leave and liberty.
[5950. Repealed.]
5951. Continuation of authority after loss of vessel or aircraft.
5952. Marine Corps organizations on vessels: authority of officers.
[5953 to 5955. Repealed.]

[§ 5941. Repealed. P.L. 90–235, § 5(b)(1), Jan. 2, 1968, 81 Stat. 761]

§ 5942. Aviation commands: eligibility

(a) To be eligible to command an aircraft carrier or an aircraft tender, an officer must be an officer in the line of the Navy who is designated as a naval aviator or naval flight officer and who is otherwise qualified.

(b) To be eligible to command a naval aviation school, a naval air station, or a naval aviation unit organized for flight tactical purposes, an officer must be an officer in the line of the Navy designated as a naval aviator or naval flight officer.

(c) To be eligible to command a Marine Corps aviation school, a Marine Corps air station, or a Marine Corps aviation unit organized for flight tactical purposes, an officer must be an officer of the Marine Corps designated as a naval aviator or naval flight officer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 371; Feb. 26, 1970, P.L. 91–198, § 1(1), 84 Stat. 15.)

§ 5943. Naval shipyards

Commanders of naval shipyards may be selected by the President from officers of the Navy not below the grade of commander.

(Aug. 10, 1956, ch. 1041, 70A Stat. 371.)

§ 5944. Marine Corps officers: limitation on power to command

Officers of the Marine Corps may not command vessels or naval shipyards.

(Aug. 10, 1956, ch. 1041, 70A Stat. 371.)

§ 5945. Staff corps officers: limitation on power to command

An officer in a staff corps may command only such activities as are appropriate to his corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 371; Nov. 8, 1967, P.L. 90–130, § 1(21), 81 Stat. 380.)

§ 5946. Precedence accorded commanding officers

The commanding officer of a vessel or of a naval station takes precedence over all officers under his command.

(Aug. 10, 1956, ch. 1041, 70A Stat. 372.)

§ 5947. Requirement of exemplary conduct

All commanding officers and others in authority in the naval service are required to show in themselves a good example of virtue, honor, patriotism, and subordination; to be vigilant in inspecting the conduct of all persons who are placed under their command; to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Navy, all persons who are guilty of them; and to take all necessary and proper measures, under the laws, regulations, and customs of the naval service, to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 372.)

§ 5948. Consular powers: senior officer present afloat

In any foreign port where there is no resident consul of the United States, or on the high seas, the senior officer present afloat has the powers of a consul in relation to mariners of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 372.)

§ 5949. Policy as to leave and liberty

The commanding officer of a vessel shall favor the faithful and obedient in granting leave and liberty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 372.)

[§ 5950. Repealed. P.L. 90–235, § 5(b)(1), Jan. 2, 1968, 81 Stat. 761]

§ 5951. Continuation of authority after loss of vessel or aircraft

If the crew of any naval vessel or naval aircraft are separated from their vessel or aircraft because of its wreck, loss, or destruction, all the command and authority given to the officers of the vessel or aircraft remain in full force until the crew are discharged or reassigned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 372.)

§ 5952. Marine Corps organizations on vessels: authority of officers

When an organization of the Marine Corps is embarked in any vessel, not as part of the authorized complement of the vessel, the authority of the officers of that organization is the same as though the organization were serving at a naval station. However, this section does not impair the paramount authority of the commanding officer of a vessel over the vessel and all persons embarked in it.

(Aug. 10, 1956, ch. 1041, 70A Stat. 372.)

[§§ 5953, 5954. Repealed. P.L. 90–235, § 5 (a)(2), (b)(1), Jan. 2, 1968, 81 Stat. 761]

[§ 5955. Repealed. P.L. 96–513, § 361(a), Dec 12, 1980, 94 Stat. 2902]

CHAPTER 553—SPECIAL ASSIGNMENTS AND DETAILS

Sec.
[5981, 5982. Repealed.]
5983. State Department: assignment of enlisted members as custodians of buildings in foreign countries.
[5984. Repealed.]
5985. Nautical Schools: detail of naval officers as superintendents or instructors.
5986. Technical institutions: detail of naval officers to promote knowledge of naval engineering and naval architecture.
[5987. Repealed.]

[§ 5981. Repealed. P.L. 91–482, § 1(a), Oct. 21, 1970, 84 Stat. 1082]

[§ 5982. Repealed. P.L. 96–513, § 361(b), Dec. 12, 1980, 94 Stat. 2902]

§ 5983. State Department: assignment of enlisted members as custodians of buildings in foreign countries

Upon the request of the Secretary of State, the Secretary of the Navy may assign enlisted members of the naval service to serve as custodians under the supervision of the principal officer at any embassy, legation, or consulate.

(Aug. 10, 1956, ch. 1041, 70A Stat. 374.)

[§ 5984. Repealed. P.L. 90–235, § 4(b)(1), Jan. 2, 1968, 81 Stat. 760]

§ 5985. Nautical Schools: detail of naval officers as superintendents or instructors

The President may detail officers of the Navy as superintendents or instructors of institutions receiving benefits under section 1304 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1295c), when in his opinion it can be done without detriment to the naval service. Officers so detailed shall be recalled from an institution if it is discontinued or if the good of the naval service requires.

(Aug. 10, 1956, ch. 1041, 70A Stat. 374; Nov. 8, 1985, P.L. 99–145, § 1303(a)(21), 99 Stat. 739.)

§ 5986. Technical institutions: detail of naval officers to promote knowledge of naval engineering and naval architecture

(a) To promote a knowledge of naval engineering and naval architecture, the President, upon the application of any established scientific school or college in the United States, the Territories, Commonwealths, or possessions, may detail a qualified officer of the Navy as a professor in that school or college. The number of officers detailed under this section may not exceed 25 at any one time.

(b) The President may prescribe regulations for detailing such officers and may recall them when the public interest requires.

(Aug. 10, 1956, ch. 1041, 70A Stat. 374.)

[§ 5987. Repealed. P.L. 90–235, § 4(a)(2), Jan. 2, 1968, 81 Stat. 759]

CHAPTER 555—ADMINISTRATION

Sec.
6011. Navy Regulations.
6012. Additional regulations for Marine Corps.
6013. Enlisted grades and ratings: authority to establish.
6014. Enlisted members: authority for transfer between Marine Corps and Hospital Corps of the Navy.
[6015 to 6018. Repealed.]
6019. Citizenship of officers of vessels.
[6020. Repealed.]
6021. Aviation duties: number of personnel assigned.
6022. Aviation training facilities.
[6023. Repealed.]
6024. Aviation designations: naval flight officer.
[6025, 6026. Repealed.]
6027. Medical Department: composition.
[6028. Repealed.]
6029. Dental services: responsibilities of senior dental officer.
[6030. Repealed.]
6031. Chaplains: divine services.
6032. Indebtedness to Marine Corps Exchanges: payment from appropriated funds in certain cases.
[6033, 6034. Repealed.]
6035. Female members: congressional review period for assignment to duty on submarines or for reconfiguration of submarines.

§ 6011. Navy Regulations

United States Navy Regulations shall be issued by the Secretary of the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 375; Oct. 14, 1981, P.L. 97–60, § 204(a)(2), 95 Stat. 1007.)

§ 6012. Additional regulations for Marine Corps

The President may prescribe military regulations for the discipline of the Marine Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 375.)

§ 6013. Enlisted grades and ratings: authority to establish

The Secretary of the Navy may establish such enlisted grades and ratings as are necessary for the proper administration of the Navy and the Marine Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 375.)

§ 6014. Enlisted members: authority for transfer between Marine Corps and Hospital Corps of the Navy

Under regulations prescribed by the Secretary of the Navy, enlisted members of the Marine Corps are eligible for transfer to the Hospital Corps of the Navy, and enlisted members of the Hospital Corps are eligible for transfer to the Marine Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 375.)

[§ 6015. Repealed. P.L. 103–160, § 541(a), Nov. 30, 1993, 107 Stat. 1659]

[§ 6016. Repealed. P.L. 85–861, § 36B(16), Sept. 2, 1958, 72 Stat. 1571]

[§ 6017. Repealed. P.L. 103–337, § 1662(k)(2), Oct. 5, 1994, 108 Stat. 3006]

[§ 6018. Repealed. P.L. 96–513, § 372, Dec. 12, 1980, 94 Stat. 2903]

§ 6019. Citizenship of officers of vessels

The officers of vessels of the United States shall in all cases by citizens of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 376.)

[§ 6020. Repealed. P.L. 87–123, § 5(23), Aug. 3, 1961, 75 Stat. 266]

§ 6021. Aviation duties: number of personnel assigned

The number of officers and enlisted members of the Navy and the Marine Corps detailed to duty involving flying and to other duties in connection with aircraft shall be in accordance with the requirements of naval aviation as determined by the Secretary of the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 376.)

§ 6022. Aviation training facilities

The President may maintain facilities to provide flight training for 16,000 members of the naval service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 376.)

[§ 6023. Repealed. P.L. 92–168, § 2(1), Nov. 24, 1971, 85 Stat. 489]

§ 6024. Aviation designations: naval flight officer

Any officer of the naval service may be designated a naval flight officer if he has successfully completed the course prescribed for naval flight officers.

(Aug. 10, 1956, ch. 1041, 70A Stat. 377; Feb. 26, 1970, P.L. 91–198, § 1(2), 84 Stat. 15.)

[§ 6025. Repealed. P.L. 92–168, § 2(2), Nov. 24, 1971, 85 Stat. 489]

[§ 6026. Repealed. P.L. 92–310, § 204(a), June 6, 1972, 86 Stat. 202]

§ 6027. Medical Department: composition

The Medical Corps and Dental Corps, and such other staff corps as the Secretary of the Navy may establish under section 5150(b) of this title and designate to be in the Medical Department of the Navy, are in the Medical Department of the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 377; Dec. 12, 1980, P.L. 96–513, § 353, 94 Stat. 2902; Oct. 1, 1986, P.L. 99–433, § 514(c)(3), 100 Stat. 1055.)

[§ 6028. Repealed. P.L. 96–513, § 352(b), Dec. 12, 1980, 94 Stat. 2902]

§ 6029. Dental services: responsibilities of senior dental officer

(a) The Secretary of the Navy shall prescribe regulations for dental services on ships and at shore stations. Such services shall be under the senior dental officer, who is responsible to the commanding officer of the ship or station for all professional, technical, and administrative matters concerning dental services.

(b) This section does not impose any administrative requirements that would interfere with the proper functioning of battle organizations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 377.)

[§ 6030. Repealed. P.L. 90–130, § 1(22), Nov. 8, 1967, 81 Stat. 380]

§ 6031. Chaplains: divine services

(a) An officer in the Chaplain Corps may conduct public worship according to the manner and forms of the church of which he is a member.

(b) The commanders of vessels and naval activities to which chaplains are attached shall cause divine service to be performed on Sunday, whenever the weather and other circumstances allow it to be done; and it is earnestly recommended to all officers, seamen, and others in the naval service diligently to attend at every performance of the worship of Almighty God.

(c) All persons in the Navy and in the Marine Corps are enjoined to behave themselves in a reverent and becoming manner during divine service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 378; Aug. 7, 1959, P.L. 86–140, 73 Stat. 288.)

§ 6032. Indebtedness to Marine Corps Exchanges: payment from appropriated funds in certain cases

Under regulations prescribed by the Secretary of the Navy, appropriations for the pay of the Marine Corps are available to pay any indebtedness to Marine Corps Exchanges of members of the Marine Corps who are discharged, who desert, or who are sentenced to prison.

(Aug. 10, 1956, ch. 1041, 70A Stat. 378.)

[§ 6033. Repealed. P.L. 90–235, § 7(a)(3), Jan. 2, 1968, 81 Stat. 763]

[§ 6034. Repealed. P.L. 103–337, § 1662(j)(8), Oct. 5, 1994, 108 Stat. 3005]

§ 6035. Female members: congressional review period for assignment to duty on submarines or for reconfiguration of submarines

(a) No change in the Department of the Navy policy limiting service on submarines to males, as in effect on May 10, 2000, may take effect until—

(1) the Secretary of Defense submits to Congress written notice of the proposed change; and

(2) a period of 30 days of continuous session of Congress (excluding any day on which either House of Congress is not in session) expires following the date on which the notice is received.

(b) No funds available to the Department of the Navy may be expended to reconfigure any existing submarine, or to design any new submarine, to accommodate female crew members until—

(1) the Secretary of Defense submits to Congress written notice of the proposed reconfiguration or design; and

(2) a period of 30 days of continuous session of Congress (excluding any day on which either House of Congress is not in session) expires following the date on which the notice is received.

(c) For purposes of this section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die.

(Added P.L. 106–398, § 1[573(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–136.)

CHAPTER 557—RATIONS

Sec.
6081. Navy ration: persons entitled to.
6082. Rations.
6083. Fixing cost on certain vessels and stations.
6084. Enlisted members assigned to mess: basic allowance for subsistence paid to mess.
6085. Flight rations.
6086. Subsistence in hospital messes; hospital ration.
6087. Sale of meals by general messes.

§ 6081. Navy ration: persons entitled to

(a) Each enlisted member of the naval service is entitled to a Navy ration for each day that he is on active duty, including each day that he is on leave.

(b) Each midshipman is entitled to a Navy ration for each day that he is on active duty, including each day that he is on leave.

(c) The Secretary of the Navy may prescribe regulations stating the conditions under which the ration shall be allowed under subsection (b).

(Aug. 10, 1956, ch. 1041, 70A Stat. 379; Sept. 7, 1962, P.L. 87–649, § 5(c), 76 Stat. 494; amended P.L. 105–85, § 602(b)(2), Nov. 18, 1997, 111 Stat. 1772.)

§ 6082. Rations

(a) The President may prescribe the components and quantities of the Navy ration. The President may direct the issuance of equivalent articles in place of the prescribed components of the ration if the President determines that economy and the health and comfort of the members of the naval service require such action.

(b) An enlisted member of the naval service on active duty is entitled to one ration daily. If an emergency ration is issued, it is in addition to the regular ration.

(c) Fresh or preserved fruits, milk, butter, and eggs necessary for the proper diet of the sick and injured in hospitals shall be provided under regulations prescribed by the Secretary of the Navy.

(d) The Secretary of the Navy may increase the quantity of daily rations for members of the naval service on a vessel or at a station that has an authorized complement of less than 150 members if the President determines that the vessel or station is operating under conditions that warrant an increase in rations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 379; revised in its entirety P.L. 101–510, § 557, Nov. 5, 1990, 104 Stat. 1570.)

§ 6083. Fixing cost on certain vessels and stations

If the Secretary of the Navy considers that it is undesirable to administer the mess on any ship or at any station under the quantity allowance prescribed in section 6082 of this title, he may fix the cost of each ration for that mess.

(Aug. 10, 1956, ch. 1041, 70A Stat. 380.)

§ 6084. Enlisted members assigned to mess: basic allowance for subsistence paid to mess

Under such regulations as the Secretary of the Navy prescribes, the basic allowance for subsistence of enlisted members of the naval service assigned to duty with and subsisting in an officers' or other mess, afloat or ashore, may be paid to the mess to which they are assigned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 380.)

§ 6085. Flight rations

An aircraft flight ration chargeable to the proper Navy or Marine Corps appropriation may be furnished to members of the naval service and to civilian employees of the Department of the Navy while engaged in flight operations. The flight ration is supplementary to any ration or subsistence allowance to which the members or employees are otherwise entitled. However, the flight ration may not be furnished without charge to any person in a travel status or to any person to whom a per diem allowance is granted in place of subsistence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 380.)

§ 6086. Subsistence in hospital messes: hospital ration

(a) Enlisted members of the naval service on duty in hospitals and enlisted members of the naval service, including retired members and members of the Fleet Reserve and the Fleet Marine Corps Reserve, when sick in hospitals, may be subsisted in hospital messes. When subsistence is furnished under this subsection, the appropriation chargeable with the maintenance of the hospital mess shall be credited at the rate prescribed by the Secretary of the Navy as the value of the hospital ration.

(b) Under such regulations as the Secretary prescribes, officers in the Nurse Corps may be subsisted in hospital messes. Each officer so subsisted shall pay for her subsistence at the rate fixed by the regulations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 380.)

§ 6087. Sale of meals by general messes

Under such regulations as the Secretary of the Navy prescribes, meals may be sold by general messes afloat and ashore.

(Aug. 10, 1956, ch. 1041, 70A Stat. 381.)

CHAPTER 559—MISCELLANEOUS PROHIBITIONS AND PENALTIES

Sec.
[6111, 6112. Repealed.]
6113. Loans: Supply Corps officers.
[6114 to 6116. Repealed.]

[§ 6111. Repealed. P.L. 87–649, § 14c(35), Sept. 7, 1962, 76 Stat. 501]

[§ 6112. Repealed. P.L. 87–649, § 14c(36), Sept. 7, 1962, 76 Stat. 501]

§ 6113. Loans: Supply Corps officers

Except as otherwise provided by law, an officer in the Supply Corps on active duty may not advance or lend any sum of money, public or private, or any article or commodity and may not extend credit to any officer of the naval service on active duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 381.)

[§ 6114. Repealed. P.L. 90–235, § 6(a)(7), Jan. 2, 1968, 81 Stat. 762]

[§ 6115. Repealed. P.L. 85–861, § 36B(17), Sept. 2, 1958, 72 Stat. 1571]

[§ 6116. Repealed. P.L. 90–235, § 6(a)(2), Jan. 2, 1968, 81 Stat. 761]

CHAPTER 561—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.
6141. Presentation of United States flag upon retirement.
[6142 to 6150. Repealed.]
6151. Higher retired grade and pay for members who serve satisfactorily under temporary appointments.
6152. Emergency shore duty: advance of funds.
6153. Shore patrol duty: payment of expenses.
6154. Mileage books; commutation tickets.
6155. Uniforms, accouterments, and equipment: sale at cost.
6156. Uniform: sale to former members of the naval service.
[6157 to 6159. Repealed.]
6160. Pension to persons serving ten years.
6161. Remission of indebtedness of enlisted members upon discharge.

§ 6141. Presentation of United States flag upon retirement

(a) PRESENTATION OF FLAG.—Upon the release of a member of the Navy or Marine Corps from active duty for retirement or transfer to the Fleet Reserve or the Fleet Marine Corps Reserve, the Secretary of the Navy shall present a United States flag to the member.

(b) MULTIPLE PRESENTATIONS NOT AUTHORIZED.—A member is not eligible for a presentation of a flag under subsection (a) if the member has previously been presented a flag under this section or any other provision of law providing for the presentation of a United States flag incident to release from active service for retirement.

(c) NO COST TO RECIPIENT.—The presentation of a flag under this section shall be at no cost to the recipient.

(Added P.L. 105–261, § 644(b), Oct. 17, 1998, 112 Stat. 2048; amended P.L. 106–65, § 652(e), Oct. 5, 1999, 113 Stat. 666.)

[§§ 6142 to 6147. Repealed. P.L. 87–649, § 14c(37–43), Sept. 7, 1962, 76 Stat. 501]

[§ 6148. Repealed. P.L. 99–661, § 604(f)(1)(A), Nov. 14, 1986, 100 Stat. 3877]

[§ 6149. Repealed. P.L. 88–132, § 5(h)(3), Oct. 2, 1963, 77 Stat. 214]

[§ 6150. Repealed. P.L. 86–155, § 9(a)(1), Aug. 11, 1959, 73 Stat. 337]

§ 6151. Higher retired grade and pay for members who serve satisfactorily under temporary appointments

(a) Unless otherwise entitled to a higher retired grade and subject to sections 689 and 1370 of this title, each member, other than a retired member, of the Navy or the Marine Corps shall, when retired, be advanced on the retired list to the highest officer grade

in which he served satisfactorily under a temporary appointment as determined by the Secretary of the Navy.

(b) Each member (other than a former member of the Fleet Reserve or the Fleet Marine Corps Reserve) who is advanced on the retired list under this section is (unless otherwise entitled to higher retired pay) entitled to retired pay determined in accordance with the following table. References in the table are to sections of this title.

Column 1 Take	Column 2 Multiply by
Retired pay base computed under section 1406(d) or 1407.	Retired pay multiplier prescribed under section 1409 for the years of service that may be credited to him under section 1405.

(c) Each former member of the Fleet Reserve or the Fleet Marine Corps Reserve who is advanced on the retired list under this section is entitled to retired pay determined in accordance with the following table. References in the table are to sections of this title.

Column 1 Take	Column 2 Multiply by
Retired pay base computed under section 1406(d) or 1407.	Retired pay multiplier prescribed under section 1409 for the number of years of service creditable for his retainer pay at the time of retirement.

(d) A member who is advanced on the retired list under this section from the grade of warrant officer, W–1, or from an enlisted grade to a commissioned grade, and who applies to the Secretary within three months after his advancement, shall, if the Secretary approves, be restored on the retired list to his former warrant officer or enlisted grade, as the case may be. A member who is restored to his former grade under this subsection is thereafter considered for all purposes as a warrant officer, W–1, or an enlisted member, as the case may be.

(e) Retired pay computed under subsection (b) or (c), if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(Aug. 10, 1956, ch. 1041, 70A Stat. 385; May 20, 1958, P.L. 85–422, § 11(a)(6)(A), 72 Stat. 131; Sept. 2, 1958, P.L. 85–861, § 1 (138), (139)(A), 72 Stat. 1507, 1508; Oct. 2, 1963, P.L. 88–132, § 5(h)(4), 77 Stat. 214; Sept. 8, 1980, P.L. 96–342, § 813(d)(13), 94 Stat. 1108; Dec. 12, 1980, P.L. 96–512, §§ 503(45), 513(17), 94 Stat. 2914, 2932; Sept. 24, 1983, P.L. 98–94, §§ 922, 923(c)(1), 97 Stat. 641, 643; July 1, 1986, P.L. 99–348, § 203(c), 100 Stat. 696; P.L. 104–201, § 521(d), Sept. 23, 1996, 110 Stat. 2517.)

§ 6152. Emergency shore duty: advance of funds

Under such regulations as the President approves, the Secretary of the Navy may, to meet necessary expenses, advance funds to members of the naval service detailed on emergency shore duty. The funds advanced may not exceed the reasonable estimate of expenses to be incurred for which reimbursement is authorized.

(Aug. 10, 1956, ch. 1041, 70A Stat. 386.)

§ 6153. Shore patrol duty: payment of expenses

An officer, midshipman, or cadet of the naval service who is assigned to shore patrol duty away from his vessel or other duty station may be paid his actual services.

(Aug. 10, 1956, ch. 1041, 70A Stat. 386.)

§ 6154. Mileage books: commutation tickets

The Secretary of the Navy may buy such mileage books, commutation tickets, and other similar transportation tickets as he considers necessary, and he may furnish them to persons ordered to perform travel on official business. Payment for those tickets before the travel is performed is not an advance of public money within the meaning of subsections (a) and (b) of section 3324 of title 31.

(Aug. 10, 1956, ch. 1041, 70A Stat. 386; Sept. 13, 1982, P.L. 97–258, § 3(b)(8), 96 Stat. 1063; Oct. 19, 1984, P.L. 98–525, § 1405(56)(A), 98 Stat. 2626.)

§ 6155. Uniforms, accouterments, and equipment: sale at cost

Under such regulations as the Secretary of the Navy prescribes, uniforms, accouterments, and equipment shall be sold by the United States at cost to officers and midshipmen of the naval service and, when the Coast Guard is operating as a service in the Navy, to officers of the Coast Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 386.)

§ 6156. Uniform: sale to former members of the naval service

(a) Under such regulations as the Secretary of the Navy prescribes, exterior articles of uniform may be sold to a person who has been discharged from the naval service honorably or under honorable conditions. This section does not modify section 772 or 773 of this title.

(b) Money received from sales under this section shall be covered into the Treasury to the credit of the appropriation out of which the articles were purchased.

(Aug. 10, 1956, ch. 1041, 70A Stat. 386.)

[§ 6157. Repealed. P.L. 87–651, § 123(b), Sept. 7, 1962, 76 Stat. 514]

[§ 6158. Repealed. P.L. 90–235, § 7(b)(1), Jan. 2, 1968, 81 Stat. 763]

[§ 6159. Repealed. P.L. 91–482, § 1(a), Oct. 21, 1970, 84 Stat. 1082]

§ 6160. Pension to persons serving ten years

(a) Every disabled person who has served in the Navy or Marine Corps as an enlisted member or petty officer, or both, for ten or more years, and has not been discharged for misconduct, may apply to the Secretary of the Navy for aid.

(b) Upon receipt of an application under subsection (a), the Secretary of the Navy may convene a board of not less than three naval officers (one of whom shall be a surgeon) to examine into the

condition of the applicant, and to recommend a suitable amount for his relief, and for a specified time. If the Secretary of the Navy approves the recommendation, he shall so certify to the Secretary of Veterans Affairs, who shall pay a pension in such amount monthly to the applicant.

(c) No naval pension under this section shall be paid at a rate in excess of the rate payable to a veteran of World War I for permanent and total non-service-connected disability, unless the applicant's disability is service-connected, in which case the naval pension payable to him shall not exceed the rate of disability compensation payable for total disability to a veteran of any war, or of peacetime service, as the case may be. In the case of any initial award of naval pension granted before July 14, 1943, where the person granted the naval pension is also entitled to pension or compensation under laws administered by the Secretary of Veterans Affairs, such naval pension shall not exceed one-fourth of such pension or compensation.

(Added P.L. 85–56, § 2201(31)(C), June 17, 1957, 71 Stat. 161; amended P.L. 85–857, § 13(v)(4), Sept. 2, 1958, 72 Stat. 1268; P.L. 99–145, § 1301(c), Nov. 8, 1985, 99 Stat. 736; P.L. 101–189, § 1621(a)(2), Nov. 29, 1989, 103 Stat. 1603; P.L. 101–510, § 1484(j)(4), Nov. 5, 1990, 104 Stat. 1719.)

§ 6161. Remission of indebtedness of enlisted members upon discharge

If he considers it in the best interest of the United States, the Secretary of the Navy may have remitted or canceled any part of an enlisted member's indebtedness to the United States or any of its instrumentalities remaining unpaid before, or at the time of that member's honorable discharge.

(Added P.L. 86–511, § 1(a), June 11, 1960, 74 Stat. 207.)

CHAPTER 563—HOSPITALIZATION AND MEDICAL CARE

Sec.
6201. Members of the naval service in other United States hospitals.
6202. Insane members of the naval service.
6203. Emergency medical treatment: reimbursement for expense.

§ 6201. Members of the naval service in other United States hospitals

(a) When appropriate naval hospital facilities are unavailable, the Secretary of the Navy may provide for the care and treatment of members of the naval service, entitled to treatment in naval hospitals, in other United States hospitals, if the agencies controlling the other hospitals consent. Expenses incident to such care and treatment are chargeable to the same appropriation as would be chargeable for care and treatment in a naval hospital.

(b) The deduction authorized by section 4812 of the Revised Statutes (24 U.S.C. 16) shall be made from accounts of members hospitalized under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 387; Sept. 2, 1958, P.L. 85–861, § 36B(19), 72 Stat. 1571; Dec. 12, 1980, P.L. 96–513, § 513(14), 94 Stat. 2932.)

§ 6202. Insane members of the naval service

A member of the naval service who becomes insane may be placed in the hospital for the insane that, in the opinion of the Secretary of the Navy, is most convenient and will provide the most beneficial treatment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 387.)

§ 6203. Emergency medical treatment: reimbursement for expense

The Secretary of the Navy shall prescribe regulations for reimbursing members of the naval service for expenses of emergency or necessary medical service, including hospitalization and medicines, when the member was in a duty status at the time he received the service and the service was not available from a Federal source. For the purpose of this section, a member on leave or liberty is in a duty status.

(Aug. 10, 1956, ch. 1041, 70A Stat. 387.)

CHAPTER 565—BANDS

Sec.
6221. United States Navy Band.
6222. United States Marine Band: composition; director; assistant director.
6223. Competition with civilian musicians prohibited.
[6224. Repealed.]

§ 6221. United States Navy Band

There is a Navy band known as the United States Navy Band.

(Aug. 10, 1956, ch. 1041, 70A Stat. 388; Sept. 7, 1962, P.L. 87–649, § 14c(44), 76 Stat. 501; Dec. 12, 1980, P.L. 96–513, § 513(16), 94 Stat. 2932.)

§ 6222. United States Marine Band: composition; director; assistant director

(a) The band of the Marine Corps shall be composed of one director, two assistant directors, and other personnel in such numbers and grades as the Secretary of the Navy determines to be necessary.

(b) The Secretary shall designate the director and assistant directors of the Marine Band from among qualified members of the Marine Corps. Upon the recommendation of the Secretary, a member so designated may be appointed by the President, by and with the advice and consent of the Senate, to a commissioned grade in the Regular Marine Corps.

(c) The initial appointment to a commissioned grade of a member designated as director of the Marine Band shall be in the grade of captain, except that a member who, at the time of his designation, holds an appointment in a higher grade may be appointed in that higher grade, but not above lieutenant colonel. The initial appointment of a member designated as assistant director shall be in a grade below captain.

(d) The Secretary shall prescribe regulations for the promotion of members designated as director or assistant director of the Marine Band, and the President, by and with the advice and consent of the Senate, may from time to time appoint them to higher grades.

(e) Unless otherwise entitled to higher retired grade and retired pay, a member who holds, or has held, an appointment under this section is entitled, when retired, to be retired in, and with retired pay based on, the highest grade held under this section in which the Secretary determines that he served satisfactorily.

(f) The Secretary may revoke any designation as director or assistant director of the Marine Band. When a member's designation is revoked, his appointment to commissioned grade under this section terminates and he is entitled, at his option—

(1) to be discharged from the Marine Corps; or

(2) to revert to the grade and status he held at the time of his designation as director or assistant director.

(Aug. 10, 1956, ch. 1041, 70A Stat. 388; Sept. 2, 1958, P.L. 85–861, § 1(140), 72 Stat. 1508; Sept. 7, 1962, P.L. 87–649, § 14c(45), 76 Stat. 501; Feb. 24, 1970, P.L. 91–197, 84 Stat. 15; Dec. 12, 1980, P.L. 96–513, § 513(18), 94 Stat. 2932.)

§ 6223. Competition with civilian musicians prohibited

(a) NAVY BANDS AND MEMBERS.—No Navy band, except the United States Naval Academy Band, and no member of any Navy band may receive remuneration for furnishing music outside a military installation when the furnishing of such music involves competition with local civilian musicians.

(b) THE UNITED STATES MARINE CORPS BAND.—No member of the United States Marine Corps Band, as an individual, may furnish music in competition with any civilian musician or receive remuneration for furnishing music except under special circumstances when authorized by the President.

(c) EXCEPTION FOR COMMERCIAL RECORDINGS.—(1) Notwithstanding any limitation contained in subsection (a) or (b), any Navy band or Marine Corps band designated as a special band may produce recordings for commercial sale.

(2) Amounts received as proceeds from the sale of any such recordings may be credited to applicable appropriations of the Department of the Navy for expenses of Navy and Marine Corps bands.

(3) The Secretary of the Navy shall prescribe regulations governing the accounting of such proceeds.

(Aug. 10, 1956, ch. 1041, 70A Stat. 388; Nov. 5, 1990, P.L. 101–510, § 327(b), 104 Stat. 1532; April 6, 1991, P.L. 102–25, § 701(j)(7), 105 Stat. 116.)

[§ 6224. Repealed. P.L. 87–649, § 14c(46), Sept. 7, 1962, 76 Stat. 501]

CHAPTER 567—DECORATIONS AND AWARDS

Sec.
6241. Medal of honor.
6242. Navy cross.
6243. Distinguished-service medal.
6244. Silver star medal.
6245. Distinguished flying cross.
6246. Navy and Marine Corps Medal.
6247. Additional awards.
6248. Limitations of time.
6249. Limitation of honorable service.
6250. Posthumous awards.
6251. Delegation of power to award.
6252. Regulations.
6253. Replacement.
6254. Availability of appropriations.
6255. Commemorative or special medals: facsimiles and ribbons.

§ 6241. Medal of honor

The President may award, and present in the name of Congress, a medal of honor of appropriate design, with ribbons and appurtenances, to a person who, while a member of the naval service, distinguishes himself conspicuously by gallantry and intrepidity at the risk of his life above and beyond the call of duty—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 389; July 25, 1963, P.L. 88–77, § 2(1), 77 Stat. 93; Feb. 10, 1996, P.L. 104–106, § 1503(b)(2), 110 Stat. 512.)

§ 6242. Navy cross

The President may award a Navy cross of appropriate design, with ribbons and appurtenances, to a person who, while serving in any capacity with the Navy or Marine Corps, distinguishes himself by extraordinary heroism not justifying the award of a medal of honor—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 389; July 25, 1963, P.L. 88–77, § 2(2), 77 Stat. 94.)

§ 6243. Distinguished-service medal

The President may award a distinguished-service medal of appropriate design and a ribbon, together with a rosette or other device to be worn in place thereof, to any person who, while serving in any capacity with the Navy or the Marine Corps, distinguishes himself by exceptionally meritorious service to the United States in a duty of great responsibility.

(Aug. 10, 1956, ch. 1041, 70A Stat. 389.)

§ 6244. Silver star medal

The President may award a silver star medal of appropriate design, with ribbons and appurtenances, to a person who, while serving in any capacity with the Navy or Marine Corps, is cited for gallantry in action that does not warrant a medal of honor or Navy cross—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 389; July 25, 1963, P.L. 88–77, § 2(3), 77 Stat. 94.)

§ 6245. Distinguished flying cross

The President may award a distinguished flying cross of appropriate design with accompanying ribbon to any person who, while serving in any capacity with the Navy or the Marine Corps, distinguishes himself by heroism or extraordinary achievement while participating in an aerial flight.

(Aug. 10, 1956, ch. 1041, 70A Stat. 390.)

§ 6246. Navy and Marine Corps Medal

(a) The President may award a medal called the "Navy and Marine Corps Medal" of appropriate design with accompanying ribbon, together with a rosette or other device to be worn in place thereof—

(1) to any person who, while serving in any capacity with the Navy or the Marine Corps, distinguishes himself by heroism not involving actual conflict with an enemy; or

(2) to any person to whom the Secretary of the Navy, before August 7, 1942, awarded a letter of commendation for heroism, and who applies for that medal, regardless of the date of the act of heroism.

(b) The authority in subsection (a) includes authority to award the medal to a member of the Ready Reserve who was not in a duty status defined in section 101(d) of this title when the member distinguished himself by heroism.

(Aug. 10, 1956, ch. 1041, 70A Stat. 390; Nov. 18, 1997, P.L. 105–85, § 574(b), 111 Stat. 1758.)

§ 6247. Additional awards

Not more than one medal of honor, Navy cross, distinguished-service medal, silver star medal, distinguished flying cross, or Navy and Marine Corps Medal may be awarded to a person. However, for each succeeding act or service that would otherwise justify the award of such a medal or cross, the President may award a suitable bar, emblem, or insignia to be worn with the decoration and corresponding rosette or other device.

(Aug. 10, 1956, ch. 1041, 70A Stat. 390.)

§ 6248. Limitations of time

(a) Except as provided in section 6246 of this title or subsection (b), no medal of honor, Navy cross, distinguished-service medal, silver star medal, Navy and Marine Corps Medal, or bar, emblem, or insignia in place thereof may be awarded to a person unless—

(1) the award is made within five years after the date of the act or service justifying the award; and

(2) a statement setting forth the act or distinguished service and recommending official recognition of it was made by his superior through official channels within three years from the date of that act or service.

(b) If the Secretary of the Navy determines that—

(1) a statement setting forth the act or distinguished service and recommending official recognition of it was made by the person's superior through official channels within three years from the date of that act or service and was supported by sufficient evidence within that time; and

(2) no award was made, because the statement was lost or through inadvertence the recommendation was not acted on;

a medal of honor, Navy cross, distinguished-service medal, silver star medal, Navy and Marine Corps Medal, or bar, emblem, or insignia in place thereof, as the case may be, may be awarded to the person within two years after the date of that determination.

(Aug. 10, 1956, ch. 1041, 70A Stat. 390; July 5, 1960, P.L. 86–582, § 1(2), 74 Stat. 320.)

§ 6249. Limitation of honorable service

No medal, cross, or bar, or associated emblem or insignia may be awarded or presented to any person or to his representative if his service after he distinguished himself has not been honorable.

(Aug. 10, 1956, ch. 1041, 70A Stat. 390.)

§ 6250. Posthumous awards

If a person who distinguishes himself dies before an award to which he is entitled is made, the award may be made and the medal, cross, or bar, or associated emblem or insignia may be presented, within five years from the date of the act or service justifying the award, to his representative as designated by the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 390.)

§ 6251. Delegation of power to award

The President may delegate, under such conditions as he prescribes, to flag and general officers who are commanders-in-chief or commanding on important independent duty, his authority to award the Navy cross, the distinguished-service medal, the silver star medal, or the Navy and Marine Corps Medal.

(Aug. 10, 1956, ch. 1041, 70A Stat. 391.)

§ 6252. Regulations

The President may prescribe regulations for the administration of the preceding sections of this chapter.

(Aug. 10, 1956, ch. 1041, 70A Stat. 391.)

§ 6253. Replacement

The Secretary of the Navy may replace without charge any medal of honor, Navy cross, distinguished-service medal, silver star medal, or Navy and Marine Corps Medal, or any associated bar, emblem, or insignia awarded under this chapter that is lost or destroyed or becomes unfit for use without fault or neglect on the part of the person to whom it was awarded.

(Aug. 10, 1956, ch. 1041, 70A Stat. 391.)

§ 6254. Availability of appropriations

The Secretary of the Navy may spend from appropriations for the pay of the Navy or the Marine Corps, as appropriate, amounts necessary to provide and replace medals of honor, Navy crosses, distinguished-service medals, silver star medals, and Navy and Marine Corps Medals, and associated bars, emblems, and insignia.

(Aug. 10, 1956, ch. 1041, 70A Stat. 391.)

§ 6255. Commemorative or special medals: facsimiles and ribbons

Under regulations prescribed by the Secretary of the Navy, members of the naval service may wear, in place of commemorative or special medals awarded to them, miniature facsimiles of such medals and ribbons symbolic of the awards.

(Aug. 10, 1956, ch. 1041, 70A Stat. 391.)

CHAPTER 569—DISCHARGE OF ENLISTED MEMBERS

Sec.
[6291. Repealed.]
6292. Minors enlisted upon false statement of age.
[6293 to 6298. Repealed.]

[§ 6291. Repealed. P.L. 90–235, § 3(b)(1), Jan. 2, 1968, 81 Stat. 758]

§ 6292. Minors enlisted upon false statement of age

(a) The Secretary of the Navy, under regulations prescribed by him, may discharge or release from the naval service, with pay and allowances and form of discharge certificate appropriate for his service after enlistment, any enlisted member who, as the result of a false statement of age on his application for enlistment, was enlisted while under the minimum statutory or administrative age limit. A member so discharged or released is entitled to transportation in kind and subsistence from the place of discharge to his home.

(b) Appropriations available for pay and allowances, subsistence, and transportation of enlisted members of the naval service are available for payments under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 391.)

[§ 6293. Repealed. P.L. 90–235, § 3(a)(2), Jan. 2, 1968, 81 Stat. 757]

[§ 6294. Repealed. P.L. 96–513, § 373(g), Dec. 12, 1980, 94 Stat. 2903]

[§§ 6295 to 6298. Repealed. P.L. 90–235, §§ 3(a)(2), (b)(1), 8(3), Jan. 2, 1968, 81 Stat. 757, 758, 764]

CHAPTER 571—VOLUNTARY RETIREMENT

Sec.
6321. Officers: 40 years.
6322. Officers: 30 years.
6323. Officers: 20 years.
6324. Officers: creditable service.
6325. Officers: retired grade and pay.
6326. Enlisted members: 30 years.
6327. Officers and enlisted members of the Naval Reserve and Marine Corps Reserve: 30 years; 20 years; retired pay.
6328. Computation of years of service: voluntary retirement.
6329. Officers not to be retired for misconduct.
6330. Enlisted members: transfer to Fleet Reserve and Fleet Marine Corps Reserve; retainer pay.
6331. Members of the Fleet Reserve and Fleet Marine Corps Reserve: transfer to the retired list; retired pay.
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6335. Restoration to former grade: warrant officers and enlisted members.
6336. Highest grade held satisfactorily: Reserve enlisted members reduced in grade not as a result of the member's misconduct.

§ 6321. Officers: 40 years

(a) Each officer of the Regular Navy or the Regular Marine Corps holding a permanent appointment in the grade of warrant officer, W–1, or above who applies for retirement after completing 40 or more years of active service shall be retired by the Secretary of the Navy.

(b) For the purpose of this section, an officer's years of active service are computed by adding all his active service in the armed forces.

(Aug. 10, 1956, ch. 1041, 70A Stat. 393.)

§ 6322. Officers: 30 years

(a) An officer of the Regular Navy or the Regular Marine Corps holding a permanent appointment in the grade of warrant officer, W–1, or above who applies for retirement after completing 30 or more years of active service may, in the discretion of the Secretary of the Navy, be retired.

(b) For the purpose of this section, an officer's years of active service are computed by adding all his active service in the armed forces.

(Aug. 10, 1956, ch. 1041, 70A Stat. 394; Sept. 8, 1980, P.L. 96–342, § 813(d)(1), 94 Stat. 1104; Dec. 12, 1980, P.L. 96–513, § 513(17), 94 Stat. 2932; July 1, 1986, P.L. 99–348, § 203(b)(1), 100 Stat. 696.)

§ 6323. Officers: 20 years [1]

(a)(1) An officer of the Navy or the Marine Corps who applies for retirement after completing more than 20 years of active service, of which at least 10 years was service as a commissioned officer, may, in the discretion of the President, be retired on the first day of any month designated by the President.

(2) The Secretary of Defense may authorize the Secretary of the Navy, during the period beginning on October 1, 1990, and ending on December 31, 2001, to reduce the requirement under paragraph (1) for at least 10 years of active service as a commissioned officer to a period (determined by the Secretary) of not less than eight years.

(b) For the purposes of this section—

(1) an officer's years of active service are computed by adding all his active service in the armed forces; and

(2) his years of service as a commissioned officer are computed by adding all his active service in the armed forces under permanent or temporary appointments in grades above warrant officer, W–1.

(c) The retired grade of an officer retired under this section is the grade determined under section 1370 of this title.

(d) A warrant officer who retires under this section may elect to be placed on the retired list in the highest grade and with the highest retired pay to which he is entitled under any provision of this title. If the pay of that highest grade is less than the pay of any warrant grade satisfactorily held by him on active duty, his retired pay shall be based on the higher pay.

(e) Unless otherwise entitled to higher pay, an officer retired under this section is entitled to retired pay computed under section 6333 of this title.

(f) Officers of the Naval Reserve and the Marine Corps Reserve who were transferred to the Retired Reserve from an honorary retired list under section 213(b) of the Armed Forces Reserve Act of 1952 (66 Stat. 485), or are transferred to the Retired Reserve under section 6327 of this title, may be retired under this section, notwithstanding their retired status, if they are otherwise eligible.

(Aug. 10, 1956, ch. 1041, 70A Stat. 394; Sept. 2, 1958, P.L. 85–861, § 1(142), 72 Stat. 1509; Oct. 2, 1963, P.L. 88–132, § 5(h)(4), 77 Stat. 214; Sept. 8, 1980, P.L. 96–342, § 813(d)(2), 94 Stat. 1104; Dec. 12, 1980, P.L. 96–513, §§ 503(47)(A), 513(17), 94 Stat. 2914, 2932; P.L. 99–348, § 203(b)(2), July 1, 1986, 100 Stat. 696; Nov. 5, 1990, P.L. 101–510, § 523(b), 104 Stat. 1521; P.L. 103–160, § 561(c), Nov. 30, 1993, 107 Stat. 1667; P.L. 105–261, § 561(e), Oct. 17, 1998, 112 Stat. 2025; Oct. 30, 2000, P.L. 106–398, § 1[571(e)], 114 Stat. 1654, 1654A–134.)

§ 6324. Officers: creditable service

For the purpose of this chapter, service as a nurse in the armed forces before April 16, 1947, is considered as commissioned service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 394; Aug. 25, 1959, P.L. 86–197, § 1(6), 73 Stat. 426; Sept. 30, 1966, P.L. 89–609, § 1(15) 80 Stat. 853; Nov. 8, 1967, P.L. 90–130, § 1(23)(A), 81 Stat. 380.)

[1] For a provision providing the Secretary of Defense with a temporary early retirement authority (TERA) by authorizing, through December 31, 2001, the retirement of selected officers with at least 15, but less than 20 years of service, see section 4403 of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 102–484), as amended, set out at the end of chapter 65 (ending with section 1315).

§ 6325. Officers: retired grade and pay

(a) Except as provided in subsection (b) or section 1370 of this title, each officer who is retired under section 6321 or 6322 of this title—

(1) unless otherwise entitled to a higher grade, shall be retired in the grade in which he was serving at the time of retirement; and

(2) unless otherwise entitled to higher pay, is entitled to retired pay computed under section 6333 of this title.

(b) Each officer who is retired while serving in the grade of admiral, vice admiral, general, or lieutenant general by virtue of an appointment under section 601 of this title or who is retired while serving in a grade to which he was appointed or promoted under section 603 of this title or promoted under section 602 (as in effect before February 1, 1992) or section 5721 of this title—

(1) unless otherwise entitled to a higher grade, shall be retired in the grade he would hold if he had not received such an appointment; and

(2) unless otherwise entitled to higher pay, is entitled to retired pay computed under section 6333 of this title.

(c) A warrant officer who retires under section 6321, 6322, or 6323 of this title may elect to be placed on the retired list in the highest grade and with the highest retired pay to which he is entitled under any provision of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 394; May 20, 1958, P.L. 85–422, § 11(a)(6)(B), 72 Stat. 131; Sept. 2, 1958, P.L. 85–861, § 1(143), 72 Stat. 1509; Oct. 2, 1963, P.L. 88–132, § 5(h)(4), 77 Stat. 214; Sept. 19, 1978, P.L. 95–377, § 7, 92 Stat. 721; Sept. 8, 1980, P.L. 96–342, § 813(d)(3), 94 Stat. 1104; Dec. 12, 1980, P.L. 96–513, §§ 503(47)(B), 513(17), 94 Stat. 2914, 2932; July 10, 1981, P.L. 97–22, § 10(b)(8), 95 Stat. 137; July 1, 1986, P.L. 99–348, §§ 104(c)(2), 203(b)(3), 100 Stat. 691, 696; Oct. 23, 1992, P.L. 102–484, § 1052(39), 106 Stat. 2501.)

§ 6326. Enlisted members: 30 years

(a) Each enlisted member of the Regular Navy or the Regular Marine Corps who applies for retirement after completing 30 or more years of active service in the armed forces shall be retired by the President.

(b) For the purpose of subsection (a), "enlisted member" includes a member of the Regular Navy or the Regular Marine Corps who holds a permanent enlisted grade and a temporary appointment in a commissioned or warrant officer grade.

(c) Each person retired under this section—

(1) unless otherwise entitled to a higher grade, shall be retired in the grade in which serving at the time of retirement; and

(2) unless otherwise entitled to higher pay, is entitled to retired pay computed under section 6333 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 395; May 20, 1958, P.L. 85–422, § 6(9), 72 Stat. 129; Sept. 2, 1958, P.L. 85–861, § 36B(20), 72 Stat. 1571; Oct. 2, 1963, P.L. 88–132, § 5(h)(4), 77 Stat. 214; Dec. 16, 1967, P.L. 90–207, § 3(3), 81 Stat. 653; Sept. 8, 1980, P.L. 96–342, § 813(d)(4), 94 Stat. 1105; Dec. 12, 1980, P.L. 96–513, § 513(17), (19), 94 Stat. 2932; July 1, 1986, P.L. 99–348, § 203(b)(4), 100 Stat. 696.)

§ 6327. Officers and enlisted members of the Naval Reserve and Marine Corps Reserve: 30 years; 20 years; retired pay

(a) A member of the Naval Reserve or the Marine Corps Reserve may be transferred to the Retired Reserve upon his request if he has completed—

(1) at least 30 years of active service in the armed forces, other than active duty for training; or

(2) at least 20 years of active service in the armed forces other than active duty for training, the last 10 of which he served in the 11-year period immediately preceding his transfer to the Retired Reserve.

(b) Each member who is transferred to the Retired Reserve under subsection (a) is entitled, when not on active duty, to retired pay at the rate of 50 percent of the basic pay of the grade in which retired.

(c) This section applies only to persons who were members of the Naval Reserve or the Marine Corps Reserve on January 1, 1953.

(d) This section terminates on January 1, 1973. However, its termination will not affect any accrued rights to retired pay.

(e) A member who is eligible for retirement under this section, and who is also eligible for retirement under another provision or for transfer to the Fleet Reserve or the Fleet Marine Corps Reserve under section 6330 of this title, is entitled to elect which of these benefits he is to receive.

(Aug. 10, 1956, ch. 1041, 70A Stat. 395; Aug. 1, 1958, P.L. 85–583, § 1(1), 72 Stat. 480; Oct. 2, 1963, P.L. 88–132, § 5(h)(5), 77 Stat. 214.)

§ 6328. Computation of years of service: voluntary retirement

(a) ENLISTED MEMBERS.—Time required to be made up under section 972(a) of this title after the date of the enactment of this section may not be counted in computing years of service under this chapter.

(b) OFFICERS.—Section 972(b) of this title excludes from computation of an officer's years of service for purposes of this chapter any time identified with respect to that officer under that section.

(Added P.L. 104–106, § 561(c)(3)(A), Feb. 10, 1996, 110 Stat. 322 [former 6328 repealed by § 203(b)(5) of P.L. 99–348].)

§ 6329. Officers not to be retired for misconduct

No officer of the Navy or the Marine Corps may be retired because of misconduct for which trial by court-martial would be appropriate.

(Aug. 10, 1956, ch. 1041, 70A Stat. 396.)

§ 6330. Enlisted members: transfer to Fleet Reserve and Fleet Marine Corps Reserve; retainer pay [2]

(a) The Fleet Reserve and the Fleet Marine Corps Reserve are composed of members of the naval service transferred thereto under this section.

(b) An enlisted member of the Regular Navy or the Naval Reserve who has completed 20 or more years of active service in the armed forces may, at his request, be transferred to the Fleet Reserve. An enlisted member of the Regular Marine Corps or the Marine Corps Reserve who has completed 20 or more years of active service in the armed forces may, at his request, be transferred to the Fleet Marine Corps Reserve.

(c)(1) Each member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under this section is entitled, when not on active duty, to retainer pay computed under section 6333 of this title.

(2) A member may recompute his retainer pay under section 1402 or 1402a of this title, as appropriate, to reflect active duty after transfer.

(3) If the member has been credited by the Secretary of the Navy with extraordinary heroism in the line of duty, which determination by the Secretary is final and conclusive for all purposes, his retainer pay shall be increased by 10 percent.

(d)(1) For the purposes of subsection (c), each full month of service that is in addition to the number of full years of service creditable to a member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

(2) In determining a member's eligibility for transfer to the Fleet Reserve or the Fleet Marine Corps Reserve under subsection (b)—

(A) a completed minority enlistment of the member is counted as four years of active service, if creditable to the member for such purpose before December 31, 1977; and

(B) an enlistment of the member terminated within three months before the end of the term of enlistment is counted as active service for the full term, if creditable to the member for such purpose before December 31, 1977.

(3)(A) Subject to subparagraph (B), in determining a member's years of active service for the computation of retainer pay under subsection (c)—

(i) a completed minority enlistment of the member is counted as four years of active service; and

(ii) an enlistment of the member terminated within three months before the end of the term of enlistment is counted as active service for the full term.

(B) In the case of a member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under this section after December 30, 1977, service attributable under subparagraph (A) to

[2] For a provision providing the Secretary of Defense with a temporary early retirement authority (TERA) by authorizing, through December 31, 2001, the retirement of selected enlisted members with at least 15, but less than 20 years of service, see section 4403 of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 102–484), as amended, set out at the end of chapter 65 (ending with section 1315).

time which, after December 31, 1977, is not actually served by the member may not be counted.

(Aug. 10, 1956, ch. 1041, 70A Stat. 396; Aug. 1, 1958, P.L. 85–583, § 1(2), (3), 72 Stat. 480; Dec. 16, 1967, P.L. 90–207, § 3(4), 81 Stat. 653; Sept. 8, 1980, P.L. 96–342, § 813(d)(5), 94 Stat. 1105; Dec. 12, 1980, P.L. 96–513, § 513(17), (19), 94 Stat. 2932; Sept. 24, 1983, P.L. 98–94, § 923(c)(3), 97 Stat. 643; July 1, 1986, P.L. 99–348, §§ 203(b)(6), 305(a), 100 Stat. 696, 704; Nov. 29, 1989, P.L. 101–189, § 652(a)(5), 103 Stat. 1461.)

§ 6331. Members of the Fleet Reserve and Fleet Marine Corps Reserve: transfer to the retired list; retired pay

(a) When he has completed 30 years of service, or when he is found not physically qualified in an examination under section 6485 of this title, a member of the Fleet Reserve or the Fleet Marine Corps Reserve shall be transferred—

(1) to the retired list of the Regular Navy or the Regular Marine Corps, as appropriate, if he was a member of the Regular Navy or the Regular Marine Corps at the time of his transfer to the Fleet Reserve or the Fleet Marine Corps Reserve; or

(2) to the appropriate Retired Reserve, if he was a member of the Naval Reserve or the Marine Corps Reserve at the time of his transfer to the Fleet Reserve or the Fleet Marine Corps Reserve.

(b) For the purpose of subsection (a), a member's years of service are computed by adding—

(1) the years of service credited to him upon his transfer to the Fleet Reserve or the Fleet Marine Corps Reserve;

(2) his years of active and inactive service in the armed forces before his transfer to the Fleet Reserve or the Fleet Marine Corps Reserve not credited to him upon that transfer; and

(3) his years of service, active and inactive, in the Fleet Reserve or the Fleet Marine Corps Reserve.

(c) Unless otherwise entitled to higher pay, each member transferred to the retired list or the Retired Reserve under this section is entitled to retired pay at the same rate as the retainer pay to which he was entitled at the time of his transfer to the retired list or the Retired Reserve.

(Aug. 10, 1956, ch. 1041, 70A Stat. 397; Aug. 1, 1958, P.L. 85–583, § 1(4–6), 72 Stat. 480.)

§ 6332. Conclusiveness of transfers

When a member of the naval service is transferred by the Secretary of the Navy—

(1) to the Fleet Reserve;

(2) to the Fleet Marine Corps Reserve;

(3) from the Fleet Reserve to the retired list of the Regular Navy or the Retired Reserve; or

(4) from the Fleet Marine Corps Reserve to the retired list of the Regular Marine Corps or the Retired Reserve;

the transfer is conclusive for all purposes. Each member so transferred is entitled, when not on active duty, to retainer pay or retired pay from the date of transfer in accordance with his grade and number of years of creditable service as determined by the Secretary. The Secretary may correct any error or omission in his determination as to a member's grade and years of creditable serv-

ice. When such a correction is made, the member is entitled, when not on active duty, to retainer pay or retired pay in accordance with his grade and number of years of creditable service, as corrected, from the date of transfer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 397; Aug. 1, 1958, P.L. 85–583, § 1(7), 72 Stat. 480; Sept. 2, 1958, P.L. 85–861, § 33(a)(33), 72 Stat. 1566.)

§ 6333. Computation of retired and retainer pay

(a) The monthly retired pay or retainer pay of a member entitled to such pay under this chapter or under section 6383 of this title is computed in accordance with the following table.

Formula	For sections	Column 1 Take	Column 2 Multiply by
A	6325(a) 6326	Retired pay base computed under section 1406(d) or 1407.	75 percent.
B	6323 6325(b) 6383	Retired pay base computed under section 1406(d) or 1407.	Retired pay multiplier prescribed under section 1409 for the years of service that may be credited to him under section 1405.
C	6330	Retainer pay base computed under section 1406(d) or 1407.	Retainer pay multiplier prescribed under section 1409 for the years of service that may be credited to him under section 1405.

(b)(1) Retired pay or retainer pay computed under this section, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(2) References in the table in subsection (a) are to sections of this title.

(c) In the case of a Reserve enlisted member whose grade upon transfer to the Fleet Reserve or Fleet Marine Corps Reserve is determined under section 6336 of this title and who first became a member of a uniformed service before September 8, 1980, the retainer pay base of the member (notwithstanding section 1406(a)(1) of this title) is the amount of the monthly basic pay of the grade in which the member is so transferred (determined based upon the rates of basic pay applicable on the date of the member's transfer), and that amount shall be used for the purposes of the table in subsection (a) rather than the amount computed under section 1406(d) of this title.

(Added P.L. 98–94, § 922, Sept. 24, 1983, 97 Stat. 641; revised in its entirety P.L. 99–348, § 203(a), July 1, 1986, 100 Stat. 695; amended P.L. 103–337, § 635(b), Oct. 5, 1994, 108 Stat. 2789; P.L. 104–106, § 1503(b)(3), Feb. 10, 1996, 110 Stat. 512; P.L. 104–201, § 532(d)(2), Sept. 23, 1996, 110 Stat. 2520.)

§ 6334. Higher grade after 30 years of service: warrant officers and enlisted members

(a) Each member of the naval service covered by subsection (b) who, after December 4, 1987, is retired with less than 30 years of

active service or is transferred to the Fleet Reserve or Fleet Marine Corps Reserve is entitled, when his active service plus his service on the retired list or his service in the Fleet Reserve or the Fleet Marine Corps Reserve totals 30 years, to be advanced on the retired list to the highest grade in which he served on active duty satisfactorily, as determined by the Secretary of the Navy.

(b) This section applies to—

(1) warrant officers of the naval service;

(2) enlisted members of the Regular Navy and Regular Marine Corps; and

(3) reserve enlisted members of the Navy and Marine Corps who, at the time of retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve, are serving on active duty.

(c) An enlisted member of the naval service who is advanced on the retired list under this section is entitled to recompute his retired or retainer pay under formula A of the following table, and a warrant officer of the naval service so advanced is entitled to recompute his retired pay under formula B of that table. The amount recomputed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

Formula	Column 1 Take	Column 2 Multiply by
A	Retired pay base as computed under section 1406(d) or 1407 of this title.	The retired pay multiplier prescribed in section 1409 of this title for the number of years creditable for his retainer or retired pay at the time of retirement.[1]
B	Retired pay base as computed under section 1406(d) of this title.	The retired pay multiplier prescribed in section 1409 of this title for the number of years credited to him under section 1405 of this title.

[1] In determining the retired pay multiplier, credit each full month of service that is in addition to the number of full years of service creditable to the member as 1/12 of a year and disregard any remaining fractional part of a month.

(Added P.L. 100–180, § 512(b), Dec. 4, 1987, 101 Stat. 1089; amended P.L. 101–189, § 1622(g), Nov. 29, 1989, 103 Stat. 1605.)

§ 6335. Restoration to former grade: warrant officers and enlisted members

Each retired warrant officer or enlisted member of the naval service who has been advanced on the retired list to a higher commissioned grade under section 6334 of this title, and who applies to the Secretary of the Navy within three months after his advancement, shall, if the Secretary approves, be restored on the retired list to his former warrant officer or enlisted status, as the case may be.

(Added P.L. 100–180, § 512(b), Dec. 1987, 101 Stat. 1090.)

§ 6336. Highest grade held satisfactorily: Reserve enlisted members reduced in grade not as a result of the member's misconduct

(a) A member of the Naval Reserve or Marine Corps Reserve described in subsection (b) who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under section 6330 of this title shall be transferred in the highest enlisted grade in which the member served on active duty satisfactorily, as determined by the Secretary of the Navy.

(b) This section applies to a Reserve enlisted member who—

(1) at the time of transfer to the Fleet Reserve or Fleet Marine Corps Reserve is serving on active duty in a grade lower than the highest enlisted grade held by the member while on active duty; and

(2) was previously administratively reduced in grade not as a result of the member's own misconduct, as determined by the Secretary of the Navy.

(c) This section applies with respect to enlisted members of the Naval Reserve and Marine Corps Reserve who are transferred to the Fleet Reserve or the Fleet Marine Corps Reserve after September 30, 1996.

(Added P.L. 104–201, § 532(b)(1), Sept. 23, 1996, 110 Stat. 2519.)

CHAPTER 573—INVOLUNTARY RETIREMENT, SEPARATION, AND FURLOUGH

Sec.
6371. Mandatory retirement: Superintendent of the United States Naval Academy.
[6372 to 6382. Repealed.]
6383. Regular Navy and Regular Marine Corps; officers designated for limited duty: retirement for length of service or failures of selection for promotion; discharge for failures of selection for promotion; reversion to prior status; retired grade; retired pay.
[6384 to 6388. Repealed.]
6389. Naval Reserve and Marine Corps Reserve; officers: elimination from active status; computation of total commissioned service.
[6390 to 6403. Repealed.]
6404. Treatment of fractions of years of service in computing retired pay and separation pay.
[6405 to 6407. Repealed.]
6408. Navy and Marine Corps; warrant officers, W–1: limitation on dismissal.
[6409. Repealed.]
[6410. Repealed.]

§ 6371. Mandatory retirement: Superintendent of the United States Naval Academy

Upon the termination of the detail of an officer to the position of Superintendent of the United States Naval Academy, the Secretary of the Navy shall retire the officer under any provision of chapter 571 of this title under which the officer is eligible to retire.

(Added P.L. 106–65, § 532(a)(2)(A), Oct. 5, 1999, 113 Stat. 603 [prior § 6371 repealed Dec. 12, 1980].)

[§§ 6372 to 6374. Repealed. P.L. 96–513, § 335, Dec. 12, 1980, 94 Stat. 2898]

[§ 6375. Repealed. P.L. 87–123, § 5(26), Aug. 3, 1961, 75 Stat. 266]

[§§ 6376 to 6382. Repealed. P.L. 96–513, § 335, Dec. 12, 1980, 94 Stat. 2898]

§ 6383. Regular Navy and Regular Marine Corps; officers designated for limited duty: retirement for length of service or failures of selection for promotion; discharge for failures of selection for promotion; reversion to prior status; retired grade; retired pay

(a) MANDATORY RETIREMENT.—(1) Except as provided in subsection (k), each regular officer of the Navy who is an officer designated for limited duty and who is serving in a grade below the grade of commander and each regular officer of the Marine Corps who is an officer designated for limited duty shall be retired on the last day of the month following the month in which he completes 30 years of active naval service, exclusive of active duty for training in a reserve component.

(2) Except as provided in subsection (k), each regular officer of the Navy designated for limited duty who is serving in the grade of commander, has failed of selection for promotion to the grade of captain for the second time, and is not on a list of officers recommended for promotion to the grade of captain shall—

(A) if eligible for retirement as a commissioned officer under any provision of law, be retired under that provision of law on the date requested by the officer and approved by the Secretary of the Navy, except that the date of retirement may not be later than the first day of the seventh month beginning after the month in which the President approves the report of the selection board in which the officer is considered as having failed for promotion to the grade of captain for a second time; or

(B) if not eligible for retirement as a commissioned officer, be retired on the date requested by the officer and approved by the Secretary of the Navy after the officer becomes eligible for retirement as a commissioned officer, except that the date of retirement may not be later than the first day of the seventh calendar month beginning after the month in which the officer becomes eligible for retirement as a commissioned officer.

(3) Except as provided in subsection (k), if not retired earlier, a regular officer of the Navy designated for limited duty who is serving in the grade of commander and is not on a list of officers recommended for promotion to the grade of captain shall be retired on the last day of the month following the month in which the officer completes 35 years of active naval service, exclusive of active duty for training in a reserve component.

(4) Except as provided in subsection (k), each regular officer of the Navy designated for limited duty who is serving in the grade of captain shall, if not retired sooner, be retired on the last day of the month following the month in which the officer completes 38 years of active naval service, exclusive of active duty for training in a reserve component.

(b) LIEUTENANT COMMANDERS AND MAJORS WHO TWICE FAIL OF SELECTION FOR PROMOTION.—Except as provided in subsections (f) and (k), each regular officer on the active-duty list of the Navy serving in the grade of lieutenant commander who is an officer designated for limited duty, and each regular officer on the active-duty list of the Marine Corps serving in the grade of major who is an officer designated for limited duty, who is considered as having failed of selection for promotion to the grade of commander or lieutenant colonel, respectively, for the second time and whose name is not on a promotion list shall be retired, if eligible to retire, or be discharged on the date requested by the officer and approved by the Secretary of the Navy, but not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the selection board in which the officer is considered as having failed of selection for promotion to the grade of commander or lieutenant colonel for the second time.

(c) RETIRED GRADE AND RETIRED PAY.—Each officer retired under subsection (a) or (b)—

(1) unless otherwise entitled to a higher grade, shall be retired in the grade determined under section 1370 of this title; and

(2) is entitled to retired pay computed under section 6333 of this title.

(d) NAVY LIEUTENANTS AND MARINE CORPS CAPTAINS WHO TWICE FAIL OF SELECTION FOR PROMOTION.—Except as provided in subsections (f) and (k), each regular officer on the active-duty list of the Navy serving in the grade of lieutenant who is an officer designated for limited duty, and each regular officer on the active duty list of the Marine Corps serving in the grade of captain who is an officer designated for limited duty, who is considered as having failed of selection for promotion to the grade of lieutenant commander or major for the second time and whose name is not on a list of officers recommended for promotion shall be honorably discharged on the date requested by the officer and approved by the Secretary of the Navy, but not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the selection board in which the officer is considered as having failed of selection for promotion to the grade of lieutenant commander or major for the second time.

(e) OFFICERS IN PAY GRADES O–2 AND O–1 WHO TWICE FAIL OF SELECTION FOR PROMOTION OR ARE FOUND NOT QUALIFIED FOR PROMOTION.—(1) Each regular officer on the active-duty list of the Navy serving in the grade of lieutenant (junior grade) who is an officer designated for limited duty, and each regular officer on the active-duty list of the Marine Corps serving in the grade of first lieutenant who is an officer designated for limited duty, who is considered as having failed of selection for promotion to the grade of lieutenant (in the case of an officer of the Navy) or captain (in the case of an officer of the Marine Corps) for the second time shall be honorably discharged on the date requested by the officer and approved by the Secretary of the Navy, but not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the selection board in which the officer is considered as having failed of selection for promotion to the grade of lieutenant or captain, respectively, for the second time.

(2) Each regular officer on the active-duty list of the Navy serving in the grade of ensign who is an officer designated for limited duty, and each regular officer on the active-duty list of the Marine Corps serving in the grade of second lieutenant who is an officer designated for limited duty, who is found not qualified for promotion to the grade of lieutenant (junior grade) (in the case of an officer of the Navy) or first lieutenant (in the case of an officer of the Marine Corps) shall be honorably discharged on the date requested by the officer and approved by the Secretary of the Navy, but not later than the first day of the seventh calendar month beginning after the month in which the officer was found not qualified for promotion.

(f) 18-YEAR RETIREMENT SANCTUARY.—If an officer subject to discharge under subsection (b), (d), or (e) is (as of the date on which the officer is to be discharged) not eligible for retirement under any provision of law but is within two years of qualifying for

retirement under section 6323 of this title, the officer shall be retained on active duty as an officer designated for limited duty until becoming qualified for retirement under that section and shall then be retired under that section, unless the officer is sooner retired or discharged under another provision of law or the officer reverts to a warrant officer grade pursuant to subsection (h).

(g) REENLISTMENT FOR LDOs APPOINTED FROM ENLISTED GRADES.—(1) An officer subject to discharge under subsection (b), (d), or (e) who is described in paragraph (2) may, upon the officer's request and in the discretion of the Secretary of the Navy, be enlisted in a grade prescribed by the Secretary upon the officer's discharge pursuant to such subsection.

(2) An officer described in this paragraph is an officer who—

(A) is not eligible for retirement under any provision of law;

(B) is not covered by subsection (f); and

(C) was in an enlisted grade when first appointed as an officer designated for limited duty.

(h) REVERSION TO WARRANT OFFICER GRADE FOR LDOs APPOINTED FROM WARRANT OFFICER GRADES.—An officer subject to discharge under subsection (b), (d), or (e) (including an officer otherwise subject to retention under subsection (f)) who is not eligible for retirement under any provision of law and who had the permanent status of a warrant officer when first appointed as an officer designated for limited duty may, at the officer's option, revert to the warrant officer grade and status that the officer would hold if the officer had not been appointed as an officer designated for limited duty.

(i) DETERMINATION OF GRADE AND STATUS OF OFFICERS REVERTING TO PRIOR STATUS.—In any computation to determine the grade and status to which an officer may revert under this section, all active service as an officer designated for limited duty or as a temporary or reserve officer is included.

(j) SEPARATION PAY FOR OFFICERS DISCHARGED.—An officer discharged under this section is entitled, if eligible therefor, to separation pay under section 1174(a)(1) of this title.

(k) SELECTIVE RETENTION BOARDS FOR LDOs.—Under such regulations as he may prescribe, whenever the needs of the service require, the Secretary of the Navy may defer the retirement under subsection (a) or (b) or the discharge under subsection (b) or (d) of any officer designated for limited duty upon recommendation of a board of officers convened under section 611(b) of this title and with the consent of the officer concerned. An officer whose retirement is deferred under this subsection and who is not subsequently promoted may not be continued on active duty beyond 20 years active commissioned service, if in the grade of lieutenant or captain, beyond 24 years active commissioned service, if in the grade of lieutenant commander or major, or beyond 28 years active commissioned service, if in the grade of lieutenant colonel, or beyond age 62, whichever is earlier.

(*l*) APPLICABILITY OF SECTION ONLY TO PERMANENT LDOS.—This section does not apply to officers designated for limited duty under section 5596 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 405; May 20, 1958, P.L. 85–422, § 11(a)(6)(D), 72 Stat. 131; July 12, 1960, P.L. 86–616, § 5(2), 74 Stat. 390; June 28, 1962, P.L. 87–509, § 4(b), 76 Stat. 121; Oct. 2, 1963, P.L. 88–132, § 5(h)(4), 77 Stat. 214; Sept. 8, 1980, P.L. 96–342, § 813(d)(7), 94 Stat. 1106; Dec. 12, 1980, P.L. 96–513, § 336, § 513(17), 94 Stat. 2898, 2932; Sept. 24, 1983, P.L. 98–94, § 922, 97 Stat. 642; Oct. 19, 1984, P.L. 98–525, § 529(c), 98 Stat. 2526; July 1, 1986, P.L. 99–348, § 203(b)(7), 100 Stat. 696; Nov. 5, 1990, P.L. 101–510, § 504(c)–(d), 104 Stat. 1551; Oct. 23, 1992, P.L. 102–484, § 516(a), 106 Stat. 2403; Nov. 30, 1993, P.L. 103–160, § 561(e), 107 Stat. 1667; Oct. 5, 1994, P.L. 103–337, § 503, 108 Stat. 2749; P.L. 105–261, § 504(c), (d), Oct. 17, 1998, 112 Stat. 2004.)

[§§ 6384 to 6388. Repealed. P.L. 96–513, § 335, Dec. 12, 1980, 94 Stat. 2898]

§ 6389. Naval Reserve and Marine Corps Reserve; officers: elimination from active status; computation of total commissioned service

(a) Subject to section 12645 of this title, an officer in an active status in the Naval Reserve in the permanent grade of lieutenant or lieutenant (junior grade), and an officer in an active status in the Marine Corps Reserve in the permanent grade of captain or first lieutenant, who is considered as having twice failed of selection for promotion to the next higher grade while on the active-duty list may, in the discretion of the Secretary of the Navy, be eliminated from an active status or released from active duty and placed on the reserve active-status list.

(b) An officer who is to be eliminated from an active status under subsection (a) shall, if qualified, be given an opportunity to request transfer to the appropriate Retired Reserve and, if he requests it, shall be so transferred. If he is not so transferred, he shall, in the discretion of the Secretary, be transferred to the appropriate inactive status list or be discharged from the Naval Reserve or the Marine Corps Reserve.

(c)(1) An officer in an active status in the Naval Reserve in the permanent grade of lieutenant commander or commander, and an officer in an active status in the Marine Corps Reserve in the permanent grade of major or lieutenant colonel, who is considered as having twice failed of selection for promotion to the next higher grade while on the active-duty list shall, if qualified, be given an opportunity to request transfer to the appropriate Retired Reserve. If he is not so transferred, he shall be discharged from the Naval Reserve or the Marine Corps Reserve if he has completed a period of total commissioned service equal to that specified below for the permanent grade in which he is serving:

Grade		Total commissioned service
Navy	Marine Corps	
Commander	Lieutenant colonel	28 years.
Lieutenant commander	Major	20 years.

(2) Notwithstanding the first sentence of paragraph (1), the Secretary may defer the retirement or discharge of such number of officers serving in the grade of lieutenant commander as are necessary to maintain the authorized officer strength of the Ready Re-

serve, but the duration of such deferment for any individual officer may not be in excess of five years.

(3) Notwithstanding paragraph (1), the Secretary may defer the retirement or discharge under this subsection of an officer serving in the permanent grade of lieutenant commander or commander in the Naval Reserve or in the permanent grade of major or lieutenant colonel in the Marine Corps Reserve for a period of time which does not exceed the amount of service in an active status which was credited to the officer at the time of his original appointment or thereafter under any provision of law, if the officer can complete at least 20 years of service as computed under section 12732 of this title during the period of such deferment.

(4) Notwithstanding paragraph (1), the Secretary may defer the retirement or discharge under this subsection of such number of officers serving in the permanent grade of commander in the Medical Corps, Chaplain Corps, or Dental Corps in the Naval Reserve as are necessary to provide for mobilization requirements.

(d) For the purposes of subsection (c), the total commissioned service of an officer who has served continuously in the Naval Reserve or the Marine Corps Reserve following appointment therein in the permanent grade of ensign or second lieutenant, as the case may be, shall be computed from June 30 of the fiscal year in which he accepted the appointment. Each other officer is considered to have for this purpose as much total commissioned service as the years of active commissioned service of any regular officer on the active-duty list of the Navy not restricted in the performance of duty, or any regular officer on the active-duty list of the Marine Corps not restricted in the performance of duty, as appropriate, who has served continuously since original appointment as an ensign on the active-duty list of the Navy or as a second lieutenant on the active-duty list of the Marine Corps, has not lost numbers or precedence, and is, or has been after September 6, 1947, junior to that other officer. However, the total commissioned service that the other officer is considered to have may not be less than the actual number of years he has served as a commissioned officer in a grade above chief warrant officer, W–5.

(Added P.L. 85–861, § 1(144)(A), Sept. 2, 1958, 72 Stat. 1509; amended P.L. 86–559, § 1(46), June 30, 1960, 74 Stat. 274; P.L. 96–513, § 337(a), Dec. 12, 1980, 94 Stat. 2900; P.L. 97–86, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; P.L. 98–525, § 528(c), Oct. 19, 1984, 98 Stat. 2526; P.L. 99–145, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628; P.L. 102–190, § 1131(8)(A), Dec. 5, 1991, 105 Stat. 1506; P.L. 103–337, §§ 1628, 1673(c)(1), Oct. 5, 1994, 108 Stat. 2962, 3016; P.L. 104–106, § 1501(c)(25), Feb. 10, 1996, 110 Stat. 499.)

[§ 6390. Repealed. P.L. 96–513, § 335, Dec. 12, 1980, 94 Stat. 2898]

[§§ 6391, 6392. Repealed effective Oct. 1, 1996. P.L. 103–337, § 1629(b)(3), Oct. 5, 1994, 108 Stat. 2963]

[§ 6393. Repealed. P.L. 96–513, § 373(h), Dec. 12, 1980, 94 Stat. 2903]

[§§ 6394 to 6396. Repealed. P.L. 96–513, § 335, Dec. 12, 1980, 94 Stat. 2898]

[§ 6397. Repealed effective Oct. 1, 1996. P.L. 103–337, § 1629(b)(3), Oct. 5, 1994, 108 Stat. 2963]

[§ 6398. Repealed. P.L. 96–513, § 335, Dec. 12, 1980, 94 Stat. 2898]

[§ 6399. Repealed. P.L. 90–130, § 1(24)(G), Nov. 8, 1967, 81 Stat. 382]

[§§ 6400 to 6402. Repealed. P.L. 96–513, § 335, Dec. 12, 1980, 94 Stat. 2898]

[§ 6403. Repealed effective Oct. 1, 1996. P.L. 103–337, § 1629(b)(3), Oct. 5, 1994, 108 Stat. 2963]

§ 6404. Treatment of fractions of years of service in computing retired pay and separation pay

In determining the total number of years of service to be used as a multiplier in computing retired pay and separation pay on discharge under this chapter, each full month of service that is in addition to the number of full years of service creditable to a member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

(Aug. 10, 1956, ch. 1041, 70A Stat. 415; Dec. 12, 1980, P.L. 96–513, § 503(50), 94 Stat. 2915; Sept. 24, 1983, P.L. 98–94, § 923(c)(4), 97 Stat. 643.)

[§ 6405. Repealed. P.L. 90–235, § 4(a)(12), Jan. 2, 1968, 81 Stat. 760]

[§ 6406. Repealed. P.L. 91–482, § 1(a), Oct. 21, 1970, 84 Stat. 1082]

[§ 6407. Repealed. P.L. 96–513, § 335, Dec. 12, 1980, 94 Stat. 2898]

§ 6408. Navy and Marine Corps; warrant officers, W–1: limitation on dismissal

(a) No officer who holds the grade of warrant officer, W–1, may be dismissed from the Navy or the Marine Corps except in time of war, by order of the President.

(b) The President may drop from the rolls of the Navy or the Marine Corps any officer who holds the grade of warrant officer, W–1, who—

(1) has been absent without authority for at least three months; or

(2) is sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

(Aug. 10, 1956, ch. 1041, 70A Stat. 416.)

[§ 6409. Repealed. P.L. 90–235, § 3(b)(1), Jan. 2, 1968, 81 Stat. 758]

[§ 6410. Repealed effective Oct. 1, 1996. P.L. 103–337, § 1629(b)(3), Oct. 5, 1994, 108 Stat. 2963]

CHAPTER 575—RECALL TO ACTIVE DUTY

Sec.
[6481, 6482. Repealed.]
6483. Retired members: grade.
6484. Promotion of retired members to higher enlisted grades: retention of grade upon release from active duty.
6485. Members of the Fleet Reserve and Fleet Marine Corps Reserve: authority to recall.
6486. Members of the Fleet Reserve and Fleet Marine Corps Reserve: release from active duty.
[6487, 6488. Repealed.]

[§ 6481. Repealed. P.L. 96–513, § 362(a), Dec. 12, 1980, 94 Stat. 2903]

[§ 6482. Repealed. P.L. 98–525, § 533(f), Oct. 19, 1984, 98 Stat. 2528]

§ 6483. Retired members: grade

An officer who has been advanced on the retired list or in the Retired Reserve under former section 6150 of this title to a grade above captain in the Navy or above colonel in the Marine Corps, when recalled to active duty, may, in the discretion of the Secretary of the Navy, be recalled either in the grade he holds on the retired list or in the Retired Reserve or in the grade from which he was advanced.

(Aug. 10, 1956, ch. 1041, 70A Stat. 417; May 20, 1958, P.L. 85–422, § 6(5), 72 Stat. 129; Oct. 2, 1963, P.L. 88–132, § 5(m), 77 Stat. 215; Oct. 22, 1968, P.L. 90–623, § 2(10), 82 Stat. 1314; Dec. 12, 1980, P.L. 96–513, § 363, 94 Stat. 2903.)

§ 6484. Promotion of retired members to higher enlisted grades: retention of grade upon release from active duty

When on active duty, retired enlisted members of the Navy or the Marine Corps are eligible for promotion to higher enlisted grades or ratings. When released from active duty, they shall, unless entitled to a higher grade under another provision of law, retain the grades or ratings they hold at the time of their release.

(Aug. 10, 1956, ch. 1041, 70A Stat. 417.)

§ 6485. Members of the Fleet Reserve and Fleet Marine Corps Reserve: authority to recall

(a) A member of the Fleet Reserve or the Fleet Marine Corps Reserve may be ordered by competent authority to active duty without his consent—

(1) in time of war or national emergency declared by Congress, for the duration of the war or national emergency and for six months thereafter;

(2) in time of national emergency declared by the President; or

(3) when otherwise authorized by law.

(b) In time of peace any member of the Fleet Reserve or the Fleet Marine Corps Reserve may be required to perform not more than two months' active duty for training in each four-year period.

(Aug. 10, 1956, ch. 1041, 70A Stat. 417; July 30, 1977, P.L. 95–79, § 805, 91 Stat. 333.)

§ 6486. Members of the Fleet Reserve and Fleet Marine Corps Reserve: release from active duty

(a) Except as provided in subsection (b), the Secretary of the Navy may, at any time, release any member of the Fleet Reserve or the Fleet Marine Corps Reserve from active duty.

(b) In time of war or national emergency declared by Congress or by the President after January 1, 1953, a member of the Fleet Reserve or the Fleet Marine Corps Reserve, without his consent, may be released from active duty other than from active duty for training only if—

(1) a board of officers convened at his request by an authority designated by the Secretary recommends the release and the recommendation is approved;

(2) the member does not request that a board be convened; or

(3) his release is otherwise authorized by law.

This subsection does not apply during a period of demobilization or reduction in strength of the Navy or the Marine Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 417.)

[§§ 6487, 6488. Repealed. P.L. 96–513, § 362(b), (c), Dec. 12, 1980, 94 Stat. 2903]

CHAPTER 577—DEATH BENEFITS; CARE OF THE DEAD

Sec.
[6521. Repealed.]
6522. Disposition of effects.

[§ 6521. Repealed. P.L. 85–861, § 36B(21), Sept. 2, 1958, 72 Stat. 1571]

§ 6522. Disposition of effects

(a) If money or other personal property of a deceased member of the naval service is in the custody of the Department of the Navy, the Secretary of the Navy shall keep it in safe custody and make a diligent effort to determine and locate the heirs or next of kin of the deceased member. Property remaining unclaimed two years after the death of the member shall be sold, and the proceeds, together with any of his money held in custody, shall be covered into the Treasury.

(b) Within five years after the date the money and proceeds are covered into the Treasury, any claim that is presented therefor supported by competent proof shall be certified to Congress for consideration.

(c) The Secretary shall prescribe regulations for the administration of this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 419.)

PART III—EDUCATION AND TRAINING

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CHAPTER 601—OFFICER PROCUREMENT PROGRAMS

Sec.
[6901 to 6910. Repealed.]
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6912. Aviation cadets: benefits.
6913. Aviation cadets: appointment as reserve officers.
[6914. Repealed.]
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[§§ 6901 to 6906. Repealed. P.L. 88–647, § 301(17), Oct. 13, 1964, 78 Stat. 1072]

[§ 6907. Repealed. P.L. 87–100, § 1(1), July 21, 1961, 75 Stat. 218]

[§ 6908. Repealed. P.L. 88–647, § 301(17), Oct. 13, 1964, 78 Stat. 1072]

[§ 6909. Repealed. P.L. 96–513, § 329, Dec. 12, 1980, 94 Stat. 2896]

[§ 6910. Repealed. P.L. 88–647, § 301(17), Oct. 13, 1964, 78 Stat. 1072]

§ 6911. Aviation cadets: grade; procurement; transfer

(a) The grade of aviation cadet is a special enlisted grade in the naval service. Under such regulations as the Secretary of the Navy prescribes, citizens in civil life may be enlisted as, and enlisted members of the naval service with their consent may be designated as, aviation cadets.

(b) Except in time of war or emergency declared by Congress, 20 percent of the aviation cadets procured in each fiscal year shall be procured from qualified enlisted members of the Regular Navy and the Regular Marine Corps.

(c) No person may be enlisted or designated as an aviation cadet unless—

(1) he agrees in writing that, upon his successful completion of the course of training as an aviation cadet, he will accept a commission as an ensign in the Naval Reserve or a second lieutenant in the Marine Corps Reserve, and will serve on active duty as such for at least three years, unless sooner released; and

(2) if under 21 years of age, he has the consent of his parent or guardian to his agreement.

(d) Under such regulations as the Secretary prescribes, an aviation cadet may be transferred to another enlisted grade or rating in the naval service, released from active duty, or discharged.

(Aug. 10, 1956, ch. 1041, 70A Stat. 426; July 31, 1958, P.L. 85–578, 72 Stat. 456; Dec. 12, 1980, P.L. 96–513, § 373(f), 94 Stat. 2903.)

§ 6912. Aviation cadets: benefits

Except as provided in section 402(a) and (b) of title 37, aviation cadets or their beneficiaries are entitled to the same allowances, pensions, gratuities, and other benefits as are provided for enlisted members in pay grade E–4. While on active duty, an aviation cadet is entitled to uniforms, clothing, and equipment at the expense of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 426; Sept. 2, 1958, P.L. 85–861, § 1(147)(A), 72 Stat. 1513; Sept. 7, 1962, P.L. 87–649, § 6(f)(6), 76 Stat. 494.)

§ 6913. Aviation cadets: appointment as reserve officers

(a) An aviation cadet who fulfills the requirements of section 2003 of this title may be appointed an ensign in the Naval Reserve or a second lieutenant in the Marine Corps Reserve and designated a naval aviator.

(b) Aviation cadets who complete their training at approximately the same time are considered for all purposes to have begun their commissioned service on the same date, and the decision of the Secretary of the Navy in this regard is conclusive.

(Aug. 10, 1956, ch. 1041, 70A Stat. 427; Dec. 12, 1980, P.L. 96–513, § 513(20), 94 Stat. 2932.)

[§ 6914. Repealed. P.L. 96–513, § 374, Dec. 12, 1980, 94 Stat. 2904]

§ 6915. Reserve student aviation pilots; reserve aviation pilots: appointments in commissioned grade

(a) Under such regulations as the Secretary of the Navy prescribes, enlisted members of the Naval Reserve and the Marine Corps Reserve may be designated as student aviation pilots.

(b) A member who is not a qualified civilian aviator may not be designated as a student aviation pilot unless he agrees in writing, with the consent of his parent or guardian if he is a minor, to serve on active duty for a period of two years after successfully completing flight training, unless sooner released. Such a student aviation pilot may be released from active duty or discharged at any time by any administrative authority prescribed by the Secretary.

(c) If he is a qualified civilian aviator, a student aviation pilot may be given a brief refresher course in flight training.

(d) While he is in flight training, a student aviation pilot shall have uniforms and equipment issued to him at Government expense.

(e) Under regulations prescribed by the Secretary, a student aviation pilot of the Naval Reserve or the Marine Corps Reserve may be designated an aviation pilot upon successfully completing flight training.

(f) In time of peace, an aviation pilot who is obligated under subsection (b) to serve on active duty for a period of two years may serve, with his consent, for an additional period of not more than two years.

(g) An aviation pilot of the Naval Reserve or the Marine Corps Reserve may be released from active duty or discharged at any time by any administrative authority prescribed by the Secretary.

(h) An aviation pilot of the Naval Reserve or the Marine Corps Reserve may, if qualified under regulations prescribed by the Secretary, be appointed an ensign in the Naval Reserve or a second lieutenant in the Marine Corps Reserve, as appropriate.

(Aug. 10, 1956, ch. 1041, 70A Stat. 427; Sept. 7, 1962, P.L. 87–649, § 14c(51), 76 Stat. 501; Dec. 12, 1980, P.L. 96–513, § 513(21), 94 Stat. 2932.)

CHAPTER 602—TRAINING GENERALLY

Sec.
6931. Recruit basic training: separate housing for male and female recruits.
6932. Recruit basic training: privacy.

§ 6931. Recruit basic training: separate housing for male and female recruits

(a) PHYSICALLY SEPARATE HOUSING.—(1) The Secretary of the Navy shall provide for housing male recruits and female recruits separately and securely from each other during basic training.

(2) To meet the requirements of paragraph (1), the sleeping areas and latrine areas provided for male recruits shall be physically separated from the sleeping areas and latrine areas provided for female recruits by permanent walls, and the areas for male recruits and the areas for female recruits shall have separate entrances.

(3) The Secretary shall ensure that, when a recruit is in an area referred to in paragraph (2), the area is supervised by one or more persons who are authorized and trained to supervise the area.

(b) ALTERNATIVE SEPARATE HOUSING.—If male recruits and female recruits cannot be housed as provided under subsection (a) by October 1, 2001, at a particular installation, the Secretary of the Navy shall require (on and after that date) that male recruits in basic training at such installation be housed in barracks or other troop housing facilities that are only for males and that female recruits in basic training at such installation be housed in barracks or other troop housing facilities that are only for females.

(c) CONSTRUCTION PLANNING.—In planning for the construction of housing to be used for housing recruits during basic training, the Secretary of the Navy shall ensure that the housing is to be constructed in a manner that facilitates the housing of male recruits and female recruits separately and securely from each other.

(d) BASIC TRAINING DEFINED.—In this section, the term "basic training" means the initial entry training programs of the Navy and Marine Corps that constitute the basic training of new recruits.

(Added P.L. 105–261, § 521(b)(1), Oct. 17, 1998, 112 Stat. 2010.)

§ 6932. Recruit basic training: privacy

The Secretary of the Navy shall require that access by recruit division commanders and other training personnel to a living area in which Navy recruits are housed during basic training shall be limited after the end of the training day, other than in the case of an emergency or other exigent circumstance, to recruit division commanders and other training personnel who are of the same sex as the recruits housed in that living area or to superiors in the

chain of command of those recruits who, if not of the same sex as the recruits housed in that living area, are accompanied by a member (other than a recruit) who is of the same sex as the recruits housed in that living area.

(Added P.L. 105–261, § 522(b)(1), Oct. 17, 1998, 112 Stat. 2012.)

CHAPTER 603—UNITED STATES NAVAL ACADEMY

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§ 6951. Location [1]

The United States Naval Academy shall be located at Annapolis, Maryland.

(Aug. 10, 1956, ch. 1041, 70A Stat. 428.)

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[1] Section 553 of the National Defense Authorization Act for Fiscal Year 1995 (P.L. 103–337; 108 Stat. 2772) provides:

SEC. 553. PROHIBITION ON IMPOSITION OF ADDITIONAL CHARGES OR FEES FOR ATTENDANCE AT CERTAIN ACADEMIES.

(a) PROHIBITION.—Except as provided in subsection (b), no charge or fee for tuition, room, or board for attendance at an academy named in subsection (c) may be imposed unless the charge or fee is specifically authorized by a law enacted after [Oct. 5, 1994].

(b) EXCEPTION.—The prohibition specified in subsection (a) shall not apply with respect to any item or service provided to cadets or midshipmen at an academy named in subsection (c) for which a charge or fee is imposed as of [Oct. 5, 1994]. The Secretary of Defense or the Secretary of Transportation, as the case shall be, shall notify Congress of any change made by an academy in the amount of a charge or fee authorized under this subsection.

(c) COVERED ACADEMIES.—This section applies to the following:

(1) [omitted]

(2) The United States Naval Academy.

(3)–(5) [omitted]

§ 6951a. Superintendent

(a) There is a Superintendent of the United States Naval Academy. The immediate governance of the Naval Academy is under the Superintendent.

(b) The Superintendent shall be detailed to that position by the President. As a condition for detail to that position, an officer shall acknowledge that upon termination of that detail the officer shall be retired.

(Added P.L. 106–65, § 532(a)(2)(B), Oct. 5, 1999, 113 Stat. 603.)

§ 6952. Civilian teachers: number; compensation

(a) The Secretary of the Navy may employ as many civilians as professors, instructors, and lecturers at the Naval Academy as he considers necessary.

(b) The compensation of persons employed under this section is as prescribed by the Secretary.

(c) The Secretary of the Navy may, notwithstanding the provisions of subchapter V of chapter 55 of title 5 or section 6101 of such title, prescribe for persons employed under this section the following:

(1) The work schedule, including hours of work and tours of duty, set forth with such specificity and other characteristics as the Secretary determines appropriate.

(2) Any premium pay or compensatory time off for hours of work or tours of duty in excess of the regularly scheduled hours or tours of duty.

(d) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 428; amended ; P.L. 106–65, § 1107(b), Oct. 5, 1999, 113 Stat. 778.)

§ 6953. Midshipmen: appointment

Midshipmen at the Naval Academy shall be appointed by the President alone. An appointment is conditional until the midshipman is admitted.

(Aug. 10, 1956, ch. 1041, 70A Stat. 429; Oct. 14, 1981, P.L. 97–60, § 203(b)(1), 95 Stat. 1006.)

§ 6954. Midshipmen: number

(a) The authorized strength of the Brigade of Midshipmen (determined for any year as of the day before the last day of the academic year) is 4,000. Subject to that limitation, midshipmen are selected as follows:

(1) 65 selected in order of merit as established by competitive examination from the children of members of the armed forces who were killed in action or died of, or have a service-connected disability at not less than 100 per centum resulting from, wounds or injuries received or diseases contracted in, or preexisting injury or disease aggravated by, active service, children of members who are in a "missing status" as defined in section 551(2) of title 37, and children of civilian employees who are in "missing status" as defined in section 5561(5) of

title 5. The determination of the Department of Veterans Affairs as to service connection of the cause of death or disability is rated, is binding upon the Secretary of the Navy.

(2) Five nominated at large by the Vice President or, if there is no Vice President, by the President pro tempore of the Senate.

(3) Ten from each State, five of whom are nominated by each Senator from that State.

(4) Five nominated by each Representative in Congress.

(5) Five from the District of Columbia, nominated by the Delegate to the House of Representatives from the District of Columbia.

(6) Two from the Virgin Islands, nominated by the Delegate in Congress from the Virgin Islands.

(7) Six from Puerto Rico, five of whom are nominated by the Resident Commissioner from Puerto Rico and one who is a native of Puerto Rico nominated by the Governor of Puerto Rico.

(8) Two from Guam, nominated by the Delegate in Congress from Guam.

(9) One from American Samoa nominated by the Delegate in Congress from American Samoa.

(10) One from the Commonwealth of the Northern Mariana Islands, nominated by the resident representative from the commonwealth.

Each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, is entitled to nominate 10 persons for each vacancy that is available under this section. Nominees may be submitted without ranking or with a principal candidate and 9 ranked or unranked alternates. Qualified nominees not selected for appointment under this subsection shall be considered qualified alternates for the purposes of selection under other provisions of this chapter.

(b) In addition there may be appointed each year at the Academy midshipmen as follows:

(1) one hundred selected by the President from the children of members of an armed force who—

(A) are on active duty (other than for training) and who have served continuously on active duty for at least eight years;

(B) are, or who died while they were, retired with pay or granted retired or retainer pay;

(C) are serving as members of reserve components and are credited with at least eight years of service computed under section 12733 of this title; or

(D) would be, or who died while they would have been, entitled to retired pay under chapter 1223 of this title except for not having attained 60 years of age;

however, a person who is eligible for selection under clause (1) of subsection (a) may not be selected under this clause.

(2) 85 nominated by the Secretary of the Navy from enlisted members of the Regular Navy and the Regular Marine Corps.

(3) 85 nominated by the Secretary of the Navy from enlisted members of the Naval Reserve and the Marine Corps Reserve.

(4) 20 nominated by the Secretary of the Navy, under regulations prescribed by him, from the honor graduates of schools designated as honor schools by the Department of the Army, the Department of the Navy, or the Department of the Air Force, and from members of the Naval Reserve Officer's Training corps.

(5) 150 selected by the Secretary of the Navy in order of merit (prescribed pursuant to section 6956 of this title) from qualified alternates nominated by persons named in clauses (3) and (4) of subsection (a).

(c) The President may also appoint as midshipmen at the Academy children of persons who have been awarded the medal of honor for acts performed while in the armed forces.

(d) The Superintendent of the Naval Academy may nominate for appointment each year 50 persons from the country at large. Persons nominated under this paragraph may not displace any appointment authorized under clauses (2) through (9) of subsection (a) and may not cause the total strength of midshipmen at the Naval Academy to exceed the authorized number.

(e) The Secretary of the Navy may limit the number of midshipmen appointed under subsection (b)(5). When he does so, if the total number of midshipmen, upon admission of a new class at the Academy, will be more than 3,737, no appointments may be made under subsection (b) (2) or (3) of this section or section 6956 of this title.

(f) The Secretary of the Navy shall furnish to any Member of Congress, upon the written request of such Member, the name of the Congressman or other nominating authority responsible for the nomination of any named or identified person for appointment to the Academy.

(g) For purposes of the limitation in subsection (a) establishing the aggregate authorized strength of the Brigade of Midshipmen, the Secretary of the Navy may for any year permit a variance in that limitation by not more than one percent. In applying that limitation, and any such variance, the last day of an academic year shall be considered to be graduation day.

(Aug. 10, 1956, ch. 1041, 70A Stat. 429; Sept. 7, 1962, P.L. 87–651, § 124, 76 Stat. 514; Sept. 14, 1962, P.L. 87–663, § 1(3), 76 Stat. 547; Mar. 3, 1964, P.L. 88–276, § 2, 78 Stat. 150; Oct. 13, 1966, P.L. 89–650, § 1(1)–(3), 80 Stat. 896; July 5, 1968, P.L. 90–374, 82 Stat. 283; Oct. 22, 1968, P.L. 90–623, § 2(8), 82 Stat. 1314; Sept. 22, 1970, P.L. 91–405, § 204(c), 84 Stat. 852; Aug. 7, 1972, P.L. 92–365, § 1(2), 86 Stat. 505; Nov. 29, 1973, P.L. 93–171, § 2(1)–(3), 87 Stat. 690; Oct. 7, 1975, P.L. 94–106, § 803(b)(1), 89 Stat. 538; Dec. 24, 1980, P.L. 96–600, § 2(b), 94 Stat. 3493; Oct. 14, 1981, P.L. 97–60, § 203(b)(2), 95 Stat. 1006; Oct. 12, 1982, P.L. 97–295, § 1(44), 96 Stat. 1298; Sept. 24, 1983, P.L. 98–94, § 1005 (a)(2), (b)(2), 97 Stat. 660; Nov. 29, 1989, P.L. 101–189, § 1621(a)(1), 103 Stat. 1602; Nov. 5, 1990, P.L. 101–510, § 532(b)(1), 104 Stat. 1563; Nov. 30, 1993, P.L. 103–160, § 531, 107 Stat. 1657; Oct. 5, 1994, P.L. 103–337, § 1673(c)(2), 108 Stat. 3016; Feb. 10, 1996, P.L. 104–106, § 532(b), 110 Stat. 314; P.L. 105–85, § 1073(a)(62), Nov. 18, 1997, 111 Stat. 1903; P.L. 106–65, § 531(b)(2), Oct. 5, 1999, 113 Stat. 602; Oct. 30, 2000, P.L. 106–398, § 1[531(b)], 114 Stat. 1654, 1654A–109.)

§ 6955. Midshipmen: allotment upon redistricting of Congressional Districts

If as a result of redistricting a State the domicile of a midshipman, or a nominee, nominated by a Representative falls within

a congressional district other than that from which he was nominated, he is charged to the district in which his domicile so falls. For this purpose, the number of midshipmen otherwise authorized for that district is increased to include him. However, the number as so increased is reduced by one if he fails to become a midshipman or when he is finally separated from the Naval Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 430.)

§ 6956. Midshipmen: nomination and selection to fill vacancies

(a) If the annual quota of midshipmen from—

(1) enlisted members of the Regular Navy and the Regular Marine Corps;

(2) enlisted members of the Naval Reserve and the Marine Corps Reserve; or

(3) at large by the President;

is not filled, the Secretary may fill the vacancies by nominating for appointment other candidates from any of these sources who were found best qualified on examination for admission and not otherwise nominated.

(b) If it is determined that, upon the admission of a new class to the Academy, the number of midshipmen at the Academy will be below the authorized number, the Secretary may fill the vacancies by nominating additional midshipmen from qualified candidates designated as alternates and from other qualified candidates who competed for nomination and are recommended and found qualified by the Academic Board. At least three-fourths of those nominated under this subsection shall be from qualified alternates under clauses (2) through (8) of section 6954(a) of this title, and the remainder shall be from qualified candidates who competed for appointment under any other provision of law. An appointment of a nominee under this subsection is an additional appointment and is not in place of an appointment otherwise authorized by law.

(c) The failure of a member of a graduating class to complete the course with his class does not delay the appointment of his successor.

(Aug. 10, 1956, ch. 1041, 70A Stat. 430; Mar. 3, 1964, P.L. 88–276, § 3, 78 Stat. 151; July 5, 1968, P.L. 90–374, 82 Stat. 283; Nov. 29, 1973, P.L. 93–171, § 2(4), 87 Stat. 690; Oct. 7, 1975, P.L. 94–106, § 803(b)(2), 89 Stat. 538; Oct. 14, 1981, P.L. 97–60, § 206, 95 Stat. 1007; Nov. 5, 1990, P.L. 101–510, §§ 532(b)(2), 1322(a)(14), 104 Stat. 1563, 1671.)

§ 6957. Selection of persons from foreign countries

(a)(1) The Secretary of the Navy may permit not more than 40 persons at any one time from foreign countries to receive instruction at the Academy. Such persons shall be in addition to the authorized strength of the midshipmen under section 6954 of this title.

(2) The Secretary of the Navy, upon approval by the Secretary of Defense, shall determine the countries from which persons may be selected for appointment under this section and the number of persons that may be selected from each country. The Secretary of the Navy may establish entrance qualifications and methods of competition for selection among individual applicants under this

section and shall select those persons who will be permitted to receive instruction at the Academy under this section.

(3) In selecting persons to receive instruction under this section from among applicants from the countries approved under paragraph (2), the Secretary of the Navy shall give a priority to persons who have a national service obligation to their countries upon graduation from the Academy.

(b)(1) A person receiving instruction under this section is entitled to the pay, allowances, and emoluments of a midshipman appointed from the United States, and from the same appropriations.

(2) Each foreign country from which a midshipman is permitted to receive instruction at the Academy under this section shall reimburse the United States for the cost of providing such instruction, including the cost of pay, allowances, and emoluments provided under paragraph (1) unless a written waiver of reimbursement is granted by the Secretary of Defense. The Secretary of the Navy shall prescribe the rates for reimbursement under this paragraph, except that the reimbursement rates may not be less than the cost to the United States of providing such instruction, including pay, allowances, and emoluments, to a midshipman appointed from the United States.

(3) The amount of reimbursement waived under paragraph (2) may not exceed 50 percent of the per-person reimbursement amount otherwise required to be paid by a foreign country under such paragraph, except in the case of not more than 20 persons receiving instruction at the Naval Academy under this section at any one time.

(c)(1) Except as the Secretary of the Navy determines, a person receiving instruction under this section is subject to the same regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as a midshipman at the Academy appointed from the United States. The Secretary may prescribe regulations with respect to access to classified information by a person receiving instruction under this section that differ from the regulations that apply to a midshipman at the Academy appointed from the United States.

(2) A person receiving instruction under this section is not entitled to an appointment in an armed force of the United States by reason of graduation from the Academy.

(d) A person receiving instruction under this section is not subject to section 6958(d) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 431; Sept. 24, 1983, P.L. 98–94, § 1004(b)(1), 97 Stat. 658; amended P.L. 105–85, §§ 541(b), 543(b), Nov. 18, 1997, 111 Stat. 1740, 1743; P.L. 106–65, § 534(b), Oct. 5, 1999, 113 Stat. 605; Oct. 30, 2000, P.L. 106–398, § 1[532(b)], 114 Stat. 1654, 1654A–110.)

§ 6957a. Exchange program with foreign military academies

(a) EXCHANGE PROGRAM AUTHORIZED.—The Secretary of the Navy may permit a student enrolled at a military academy of a foreign country to receive instruction at the Naval Academy in exchange for a midshipman receiving instruction at that foreign military academy pursuant to an exchange agreement entered into between the Secretary and appropriate officials of the foreign country. Students receiving instruction at the Academy under the ex-

change program shall be in addition to persons receiving instruction at the Academy under section 6957 of this title.

(b) LIMITATIONS ON NUMBER AND DURATION OF EXCHANGES.—An exchange agreement under this section between the Secretary and a foreign country shall provide for the exchange of students on a one-for-one basis each fiscal year. Not more than 24 midshipmen and a comparable number of students from all foreign military academies participating in the exchange program may be exchanged during any fiscal year. The duration of an exchange may not exceed the equivalent of one academic semester at the Naval Academy.

(c) COSTS AND EXPENSES.—(1) A student from a military academy of a foreign country is not entitled to the pay, allowances, and emoluments of a midshipman by reason of attendance at the Naval Academy under the exchange program, and the Department of Defense may not incur any cost of international travel required for transportation of such a student to and from the sponsoring foreign country.

(2) The Secretary may provide a student from a foreign country under the exchange program, during the period of the exchange, with subsistence, transportation within the continental United States, clothing, health care, and other services to the same extent that the foreign country provides comparable support and services to the exchanged midshipman in that foreign country.

(3) The Naval Academy shall bear all costs of the exchange program from funds appropriated for the Academy. Expenditures in support of the exchange program may not exceed $120,000 during any fiscal year.

(d) APPLICATION OF OTHER LAWS.—Subsections (c) and (d) of section 6957 of this title shall apply with respect to a student enrolled at a military academy of a foreign country while attending the Naval Academy under the exchange program.

(e) REGULATIONS.—The Secretary shall prescribe regulations to implement this section. Such regulations may include qualification criteria and methods of selection for students of foreign military academies to participate in the exchange program.

(Added P.L. 105–85, § 542(b)(1), Nov. 18, 1997, 111 Stat. 1741; amended P.L. 106–65, § 535(b), Oct. 5, 1999, 113 Stat. 605.)

§ 6958. Midshipmen: qualifications for admission

(a) Each candidate for admission to the Naval Academy—

(1) must be at least 17 years of age and must not have passed his twenty-third birthday on July 1 of the calendar year in which he enters the Academy; and

(2) shall be examined according to such regulations as the Secretary of the Navy prescribes, and if rejected at one examination may not be examined again for admission to the same class unless recommended by the Academic Board.

(b) Each candidate for admission nominated under clauses (3) through (9) of section 6954(a) of this title must be domiciled in the State, or in the congressional district, from which he is nominated, or in the District of Columbia, Puerto Rico, American Samoa, Guam, or the Virgin Islands, if nominated from one of those places.

(c) Each candidate nominated under clause (2) or (3) of section 6954(b) of this title—

(1) must be a citizen of the United States;

(2) must have passed the required physical examination; and

(3) shall be appointed in the order of merit from candidates who have, in competition with each other, passed the required mental examination.

(d) To be admitted to the Naval Academy, an appointee must take and subscribe to an oath prescribed by the Secretary of the Navy. If a candidate for admission refuses to take and subscribe to the prescribed oath, the candidate's appointment is terminated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 431; Sept. 14, 1962, P.L. 87–663, § 1(4), 76 Stat. 547; Nov. 29, 1973, P.L. 93–171, § 2(5), 87 Stat. 690; Nov. 5, 1990, P.L. 101–510, § 532(b)(3), 104 Stat. 1563; Dec. 5, 1991, P.L. 102–190, § 512, 105 Stat. 1360; Sept. 23, 1996, P.L. 104–201, § 555(c), 110 Stat. 2527; P.L. 105–85, § 541(a), Nov. 18, 1997, 111 Stat. 1740.)

§ 6959. Midshipmen: agreement for length of service

(a) Each midshipman shall sign an agreement with respect to the midshipman's length of service in the armed forces. The agreement shall provide that the midshipman agrees to the following:

(1) That the midshipman will complete the course of instruction at the Naval Academy.

(2) That upon graduation from the Naval Academy the midshipman—

(A) will accept an appointment, if tendered, as a commissioned officer of the Regular Navy, the Regular Marine Corps, or the Regular Air Force; and

(B) will serve on active duty for at least five years immediately after such appointment.

(3) That if an appointment described in paragraph (2) is not tendered or if the midshipman is permitted to resign as a regular officer before completion of the commissioned service obligation of the midshipman, the midshipman—

(A) will accept an appointment as a commissioned officer in the Naval Reserve or the Marine Corps Reserve or as a Reserve in the Air Force for service in the Air Force Reserve; and

(B) will remain in that reserve component until completion of the commissioned service obligation of the midshipman.

(b)(1) The Secretary of the Navy may transfer to the Naval Reserve or the Marine Corps Reserve, and may order to active duty for such period of time as the Secretary prescribes (but not to exceed four years), a midshipman who breaches an agreement under subsection (a). The period of time for which a midshipman is ordered to active duty under this paragraph may be determined without regard to section 651(a) of this title.

(2) A midshipman who is transferred to the Naval Reserve or Marine Corps Reserve under paragraph (1) shall be transferred in an appropriate enlisted grade or rating, as determined by the Secretary.

(3) For the purposes of paragraph (1), a midshipman shall be considered to have breached an agreement under subsection (a) if the midshipman is separated from the Naval Academy under cir-

cumstances which the Secretary determines constitute a breach by the midshipman of the midshipman's agreement to complete the course of instruction at the Naval Academy and accept an appointment as a commissioned officer upon graduation from the Naval Academy.

(c) The Secretary of the Navy shall prescribe regulations to carry out this section. Those regulations shall include—

(1) standards for determining what constitutes, for the purpose of subsection (b), a breach of an agreement under subsection (a);

(2) procedures for determining whether such a breach has occurred; and

(3) standards for determining the period of time for which a person may be ordered to serve on active duty under subsection (b).

(d) In this section, "commissioned service obligation", with respect to an officer who is a graduate of the Academy, means the period beginning on the date of the officer's appointment as a commissioned officer and ending on the sixth anniversary of such appointment or, at the discretion of the Secretary of Defense, any later date up to the eighth anniversary of such appointment.

(e)(1) This section does not apply to a midshipman who is not a citizen or national of the United States.

(2) In the case of a midshipman who is a minor and who has parents or a guardian, the midshipman may sign the agreement required by subsection (a) only with the consent of a parent or guardian.

(Aug. 10, 1956, ch. 1041, 70A Stat. 432; Mar. 3, 1964, P.L. 88–276, § 5(a), 78 Stat. 153; Oct. 13, 1964, P.L. 88–647, § 301(19), 78 Stat. 1072; Oct. 19, 1984, P.L. 98–525, §§ 541(b), 542(c), 98 Stat. 2529; revised in its entirety P.L. 99–145, § 512(b), Nov. 8, 1985, 99 Stat. 624; P.L. 101–189, § 511(c), Nov. 29, 1989, 103 Stat. 1439; P.L. 104–106, § 531(b), Feb. 10, 1996, 110 Stat. 314.)

§ 6960. Midshipmen: clothing and equipment; uniform allowance

The Secretary of the Navy may prescribe the amount to be credited to a midshipman, upon original admission to the Naval Academy, for the cost of his initial issue of clothing and equipment. That amount shall be deducted from his pay. If a midshipman is discharged before graduation while owing the United States for pay advanced for the purchase of required clothing and equipment, he shall turn in as much of his clothing and equipment of a distinctively military nature as is necessary to repay the amount advanced. If the value of the clothing and equipment turned in does not cover the amount owed, the indebtedness shall be canceled.

(Aug. 10, 1956, ch. 1041, 70A Stat. 432.)

§ 6961. Midshipmen: dismissal for best interests of the service

(a) Whenever the Superintendent of the Naval Academy believes that the continued presence of any midshipman at the Academy is contrary to the best interest of the service, he shall report in writing to the Secretary of the Navy a full statement of the facts upon which his belief is based. If the Secretary determines from the report that the Superintendent's belief is well founded, the Secretary shall serve a copy of the report on the midshipman. Within

such time as the Secretary considers reasonable, the midshipman shall show cause in writing why he should not be dismissed from the Academy. The Secretary, after consideration of any cause so shown, and with the written approval of the President, may dismiss the midshipman from the Academy and from the naval service.

(b) The truth of any issue of fact raised under subsection (a), except as to the record of demerits, shall be determined by a court of inquiry convened by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 432.)

§ 6962. Midshipmen: discharge for unsatisfactory conduct or inaptitude

(a) The Superintendent of the Naval Academy shall submit to the Secretary of the Navy in writing a full report of the facts—

(1) whenever the Superintendent determines that the conduct of a midshipman is unsatisfactory; or

(2) whenever the Academic Board unanimously determines that midshipman possesses insufficient aptitude to become a commissioned officer in the naval service.

(b) A midshipman upon whom a report is made under subsection (a) shall be given an opportunity to examine the report and submit a written statement thereon. If the Secretary believes, on the basis of the report and statement, that the determination of the Superintendent or of the Academic Board is reasonable and well founded, he may discharge the midshipman from the Naval Academy and from the naval service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 432.)

§ 6963. Midshipmen: discharge for deficiency

Midshipmen found deficient at any examination shall, unless the Academic Board recommends otherwise, be discharged from the Naval Academy and from the naval service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 433.)

§ 6964. Hazing: definition; prohibition

(a) In this chapter, the term "hazing" means any unauthorized assumption of authority by a midshipman whereby another midshipman suffers or is exposed to any cruelty, indignity, humiliation, hardship, or oppression, or the deprivation or abridgement of any right.

(b) The Superintendent of the Naval Academy shall prescribe regulations, to be approved by the Secretary of the Navy, to prevent hazing.

(c) Hazing is an offense that may be dealt with as an offense against good order and discipline or as a violation of the regulations of the Naval Academy. However, no midshipman may be dismissed for a single act of hazing except by sentence of a court-martial.

(d) The finding and sentence of a court-martial of a midshipman for hazing shall be reviewed in the manner prescribed for general court-martial cases.

(e) A midshipman who is sentenced to imprisonment for hazing may not be confined with persons who have been convicted of crimes or misdemeanors.

(f) A midshipman who is dismissed from the Academy for hazing may not be reappointed as a midshipman or be appointed as a commissioned officer in the Army, Navy, Air Force, or Marine Corps until two years after the graduation of the class of which he was a member.

(Aug. 10, 1956, ch. 1041, 70A Stat. 433; Nov. 8, 1985, P.L. 99–145, § 1301(c)(2), 99 Stat. 736; Nov. 29, 1989, P.L. 101–189, § 1622(e)(8), 103 Stat. 1605.)

§ 6965. Failure to report violation: dismissal

(a) Each officer stationed at the Naval Academy, each midshipman officer, each midshipman petty officer, and each civilian member of the teaching staff of the Academy shall report promptly to the Superintendent of the Naval Academy any fact that tends to show the commission of hazing or any violation of an Academy regulation by a midshipman.

(b) An officer of the naval service who fails to make a report required by subsection (a) shall be tried by court-martial and if convicted shall be dismissed from the naval service.

(c) A civilian member of the teaching staff of the Academy who fails to make a report required by subsection (a) shall, with the approval of the Secretary of the Navy, be dismissed by the Superintendent.

(Aug. 10, 1956, ch. 1041, 70A Stat. 433.)

§ 6966. Course of study

(a) The course at the Naval Academy is four years.

(b) The Secretary of the Navy shall arrange the course so that classes will not be held on Sunday.

(Aug. 10, 1956, ch. 1041, 70A Stat. 434.)

§ 6967. Degree on graduation

Under regulations prescribed by the Secretary of the Navy, the Superintendent of the Naval Academy may confer the degree of bachelor of science upon graduates of the Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 434.)

§ 6968. Board of Visitors

(a) A Board of Visitors to the Naval Academy is constituted annually of—

(1) the chairman of the Committee on Armed Services of the Senate, or his designee;

(2) three other members of the Senate designated by the Vice President or the President pro tempore of the Senate, two of whom are members of the Committee on Appropriations of the Senate;

(3) the chairman of the Committee on Armed Services of the House of Representatives, or his designee;

(4) four other members of the House of Representatives designated by the Speaker of the House of Representatives, two of whom are members of the Committee on Appropriations of the House of Representatives; and

(5) six persons designated by the President.

(b) The persons designated by the President serve for three years each except that any member whose term of office has expired shall continue to serve until his successor is appointed. The President shall designate two persons each year to succeed the members whose terms expire that year.

(c) If a member of the Board dies or resigns, a successor shall be designated for the unexpired portion of the term by the official who designated the member.

(d) The Board shall visit the Academy annually. With the approval of the Secretary of the Navy, the Board or its members may make other visits to the Academy in connection with the duties of the Board or to consult with the Superintendent of the Academy.

(e) The Board shall inquire into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy that the Board decides to consider.

(f) Within 60 days after its annual visit, the Board shall submit a written report to the President of its action and of its views and recommendations pertaining to the Academy. Any report of a visit, other than the annual visit, shall, if approved by a majority of the members of the Board, be submitted to the President within 60 days after the approval.

(g) Upon approval by the Secretary, the Board may call in advisers for consultation.

(h) While performing his duties, each member of the Board and each adviser shall be reimbursed under Government travel regulations for his travel expenses.

(Aug. 10, 1956, ch. 1041, 70A Stat. 434; Dec. 23, 1980, P.L. 96–579, § 13(b), 94 Stat. 3369; Feb. 10, 1996, P.L. 104–106, §§ 1061(e)(2), 1502(a)(12), 110 Stat. 443, 503; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 6969. Band: composition

(a) The Naval Academy Band shall be composed of one leader, one second leader, and such enlisted members of the Navy as may be assigned.

(b) In determining years of service for the purpose of retirement, and in determining eligibility for reenlistment bonus, the members who are assigned as leader and second leader shall be treated as if they had not been so assigned.

(c) The enlisted members assigned to the Naval Academy Band shall be distributed in grade substantially the same as in the United States Navy Band.

(Aug. 10, 1956, ch. 1041, 70A Stat. 435; Sept. 7, 1962, P.L. 87–649, § 14c(52), 76 Stat. 501.)

[§ 6970. Repealed. P.L. 104–201, § 370(c), Sept. 23, 1996, 110 Stat. 2499]

§ 6971. Midshipmen's store, trade shops, dairy, and laundry: nonappropriated fund instrumentality and accounts

(a) OPERATION AS NONAPPROPRIATED FUND INSTRUMENTALITY.—The Superintendent of the Naval Academy shall operate the Naval Academy activities referred to in subsection (b) as a non-

appropriated fund instrumentality under the jurisdiction of the Navy.

(b) COVERED ACTIVITIES.—The nonappropriated fund instrumentality required under subsection (a) shall consist of the following Naval Academy activities:

(1) The midshipmen's store.
(2) The barber shop.
(3) The cobbler shop.
(4) The tailor shop.
(5) The dairy (if any).
(6) The laundry.

(c) NONAPPROPRIATED FUND ACCOUNTS.—The Superintendent of the Naval Academy shall administer a separate nonappropriated fund account for each of the Naval Academy activities included in the nonappropriated fund instrumentality required under subsection (a).

(d) CREDITING OF REVENUE.—The Superintendent shall credit all revenue received from a Naval Academy activity referred to in subsection (b) to the account administered with respect to that activity under subsection (c), and amounts so credited shall be available for operating expenses of that activity.

(e) REGULATIONS.—This section shall be carried out under regulations prescribed by the Secretary of the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 435; Nov. 2, 1966, P.L. 89–718, § 38, 80 Stat. 1120; Oct. 5, 1994, P.L. 103–337, § 376, 108 Stat. 2737; amended in its entirety P.L. 104–201, § 370(a), Sept. 23, 1996, 110 Stat. 2498; amended P.L. 105–85, § 2871(c)(1), Nov. 18, 1997, 111 Stat. 2015.)

§ 6972. Chapel: crypt and window spaces

The crypt and window spaces of the Naval Academy Chapel may be used only for memorials to officers of the Navy who have successfully commanded a fleet or squadron in battle or who have received the thanks of Congress for conspicuously distinguished services in time of war. No memorial to an officer may be accepted for, or installed in, the crypt or window spaces until at least five years after the death of that officer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 435.)

§ 6973. Gifts, bequests, and loans of property: acceptance for benefit and use of Naval Academy [2]

(a) The Secretary of the Navy may accept, hold, administer, and spend any gift or bequest of personal property, and may accept, hold, and administer any loan of personal property other than money, that is made on the condition that it be used for the benefit of, or for use in connection with, the Naval Academy or the Naval Academy Museum, its collection, or its services. Gifts and bequests of money and the proceeds from the sales of property received as

[2] Section 943 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (P.L. 106–398; 114 Stat. 1654A–243) provides:

SEC. 943. TEMPORARY AUTHORITY TO DISPOSE OF A GIFT PREVIOUSLY ACCEPTED FOR THE NAVAL ACADEMY.

Notwithstanding section 6973 of title 10, United States Code, during fiscal year 2001 the Secretary of the Navy may dispose of a gift accepted before [October 30, 2000] for the United States Naval Academy by disbursing from the United States Naval Academy general gift fund to an entity designated by the donor of the gift the amount equal to the current cash value of that gift.

gifts shall be deposited in the Treasury in the fund called "United States Naval Academy Gift and Museum Fund". The Secretary may disburse funds deposited under this subsection for the benefit or use of the Naval Academy (including the Naval Academy Museum) subject to the terms of the gift or bequest.

(b) The Secretary shall prescribe written guidelines to be used for determinations of whether the acceptance of money, any personal property, or any loan of personal property under subsection (a) would reflect unfavorably on the ability of the Department of the Navy or any officer or employee of the Department of the Navy to carry out responsibilities or duties in a fair and objective manner, or would compromise either the integrity or the appearance of the integrity of any program of the Department of the Navy or any officer or employee of the Department of the Navy who is involved in any such program.

(c) For the purpose of Federal income, estate, and gift taxes, property that is accepted under this section is considered as a gift or bequest to or for the use of the United States.

(d) Upon the request of the Secretary of the Navy, the Secretary of the Treasury may invest, reinvest, or retain investments of money or securities comprising any part of the United States Naval Academy Gift and Museum Fund in securities of the United States or in securities guaranteed as to principal and interest by the United States. The interest and benefits accruing from those securities shall be deposited to the credit of the United States Naval Academy Gift and Museum Fund and may be disbursed as provided in this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 436; Oct. 30, 2000, P.L. 106–398, § 1[942(c)], 114 Stat. 1654, 1654A–241.)

§ 6974. United States Naval Academy Museum Fund: references to Fund [3]

Any reference in a law, regulation, document, paper, or other record of the United States to the United States Naval Academy Museum Fund formerly maintained under this section shall be deemed to refer to the United States Naval Academy Gift and Museum Fund maintained under section 6973 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 436; Oct. 30, 2000, P.L. 106–398, § 1[942(d)(1)], 114 Stat. 1654, 1654A–242.)

§ 6975. Acceptance of guarantees with gifts for major projects

(a) ACCEPTANCE AUTHORITY.—Subject to subsection (c), the Secretary of the Navy may accept from a donor or donors a quali-

[3] Section 942(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (P.L. 106–398; 114 Stat. 1654A–241) provides:

(b) CONSOLIDATION OF NAVAL ACADEMY GENERAL GIFT FUND AND NAVAL ACADEMY MUSEUM FUND.—(1) The Secretary of the Navy shall transfer all amounts in the United States Naval Academy Museum Fund established by section 6974 of title 10, United States Code, to the gift fund maintained for the benefit and use of the United States Naval Academy under section 6973 of such title. Upon completing the transfer, the Secretary shall close the United States Naval Academy Museum Fund.

(2) Amounts transferred under this subsection shall be merged with other amounts in the gift fund to which transferred and shall be available for the purposes for which amounts in that gift fund are available.

fied guarantee for the completion of a major project for the benefit of the Naval Academy.

(b) OBLIGATION AUTHORITY.—The amount of a qualified guarantee accepted under this section shall be considered as contract authority to provide obligation authority for purposes of Federal fiscal and contractual requirements. Funds available for a project for which such a guarantee has been accepted may be obligated and expended for the project without regard to whether the total amount of the funds and other resources available for the project (not taking into account the amount of the guarantee) is sufficient to pay for completion of the project.

(c) NOTICE OF PROPOSED ACCEPTANCE.—The Secretary of the Navy may not accept a qualified guarantee under this section for the completion of a major project until after the expiration of 30 days following the date upon which a report of the facts concerning the proposed guarantee is submitted to Congress.

(d) PROHIBITION ON COMMINGLING OF FUNDS.—The Secretary of the Navy may not enter into any contract or other transaction involving the use of a qualified guarantee and appropriated funds in the same contract or transaction.

(e) DEFINITIONS.—In this section:

(1) MAJOR PROJECT.—The term "major project" means a project for the purchase or other procurement of real or personal property, or for the construction, renovation, or repair of real or personal property, the total cost of which is, or is estimated to be, at least $1,000,000.

(2) QUALIFIED GUARANTEE.—The term "qualified guarantee", with respect to a major project, means a guarantee that—

(A) is made by one or more persons in connection with a donation, specifically for the project, of a total amount in cash or securities that, as determined by the Secretary of the Navy, is sufficient to defray a substantial portion of the total cost of the project;

(B) is made to facilitate or expedite the completion of the project in reasonable anticipation that other donors will contribute sufficient funds or other resources in amounts sufficient to pay for completion of the project;

(C) is set forth as a written agreement that provides for the donor to furnish in cash or securities, in addition to the donor's other gift or gifts for the project, any additional amount that may become necessary for paying the cost of completing the project by reason of a failure to obtain from other donors or sources funds or other resources in amounts sufficient to pay the cost of completing the project; and

(D) is accompanied by—

(i) an irrevocable and unconditional standby letter of credit for the benefit of the Naval Academy that is in the amount of the guarantee and is issued by a major United States commercial bank; or

(ii) a qualified account control agreement.

(3) QUALIFIED ACCOUNT CONTROL AGREEMENT.—The term "qualified account control agreement", with respect to a guar-

antee of a donor, means an agreement among the donor, the Secretary of the Navy, and a major United States investment management firm that—

(A) ensures the availability of sufficient funds or other financial resources to pay the amount guaranteed during the period of the guarantee;

(B) provides for the perfection of a security interest in the assets of the account for the United States for the benefit of the Naval Academy with the highest priority available for liens and security interests under applicable law;

(C) requires the donor to maintain in an account with the investment management firm assets having a total value that is not less than 130 percent of the amount guaranteed; and

(D) requires the investment management firm, at any time that the value of the account is less than the value required to be maintained under subparagraph (C), to liquidate any noncash assets in the account and reinvest the proceeds in Treasury bills issued under section 3104 of title 31.

(4) MAJOR UNITED STATES COMMERCIAL BANK.—The term "major United States commercial bank" means a commercial bank that—

(A) is an insured bank (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813));

(B) is headquartered in the United States; and

(C) has net assets in a total amount considered by the Secretary of the Navy to qualify the bank as a major bank.

(5) MAJOR UNITED STATES INVESTMENT MANAGEMENT FIRM.—The term "major United States investment management firm" means any broker, dealer, investment adviser, or provider of investment supervisory services (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) or section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2)) or a major United States commercial bank that—

(A) is headquartered in the United States; and

(B) holds for the account of others investment assets in a total amount considered by the Secretary of the Navy to qualify the firm as a major investment management firm.

(Added P.L. 106–65, § 2871(b)(1), Oct. 5, 1999, 113 Stat. 873; amended P.L. 106–398, § 1[1087(a)(17)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291.)

§ 6976. Operation of Naval Academy dairy farm

(a) DISCRETION REGARDING CONTINUED OPERATION.—(1) Subject to paragraph (2), the Secretary of the Navy may terminate or reduce the dairy or other operations conducted at the Naval Academy dairy farm located in Gambrills, Maryland.

(2) Notwithstanding the termination or reduction of operations at the Naval Academy dairy farm under paragraph (1), the real property containing the dairy farm (consisting of approximately 875 acres)—

(A) may not be declared to be excess real property to the needs of the Navy or transferred or otherwise disposed of by the Navy or any Federal agency; and

(B) shall be maintained in its rural and agricultural nature.

(b) LEASE AUTHORITY.—(1) Subject to paragraph (2), to the extent that the termination or reduction of operations at the Naval Academy dairy farm permit, the Secretary of the Navy may lease the real property containing the dairy farm, and any improvements and personal property thereon, to such persons and under such terms as the Secretary considers appropriate. In leasing any of the property, the Secretary may give a preference to persons who will continue dairy operations on the property.

(2) Any lease of property at the Naval Academy dairy farm shall be subject to a condition that the lessee maintain the rural and agricultural nature of the leased property.

(c) LEASE PROCEEDS.—All money received from a lease entered into under subsection (b) shall be retained by the Superintendent of the Naval Academy and shall be available to cover expenses related to the property described in subsection (a), including reimbursing nonappropriated fund instrumentalities of the Naval Academy.

(d) EFFECT OF OTHER LAWS.—Nothing in section 6971 of this title shall be construed to require the Secretary of the Navy or the Superintendent of the Naval Academy to operate a dairy farm for the Naval Academy in Gambrills, Maryland, or any other location.

(Added P.L. 105–85, § 2871(a)(1), Nov. 18, 1997, 111 Stat. 2014; amended P.L. 106–65, § 2814, Oct. 5, 1999, 113 Stat. 851.)

§ 6977. Grants for faculty research for scientific, literary, and educational purposes: acceptance; authorized grantees

(a) ACCEPTANCE OF RESEARCH GRANTS.—The Secretary of the Navy may authorize the Superintendent of the Academy to accept qualifying research grants under this section. Any such grant may only be accepted if the work under the grant is to be carried out by a professor or instructor of the Academy for a scientific, literary, or educational purpose.

(b) QUALIFYING GRANTS.—A qualifying research grant under this section is a grant that is awarded on a competitive basis by an entity referred to in subsection (c) for a research project with a scientific, literary, or educational purpose.

(c) ENTITIES FROM WHICH GRANTS MAY BE ACCEPTED.—A grant may be accepted under this section only from a corporation, fund, foundation, educational institution, or similar entity that is organized and operated primarily for scientific, literary, or educational purposes.

(d) ADMINISTRATION OF GRANT FUNDS.—The Secretary shall establish an account for administering funds received as research grants under this section. The Superintendent shall use the funds in the account in accordance with applicable regulations and the terms and conditions of the grants received.

(e) RELATED EXPENSES.—Subject to such limitations as may be provided in appropriations Acts, appropriations available for the

Academy may be used to pay expenses incurred by the Academy in applying for, and otherwise pursuing, award of a qualifying research grant.

(f) REGULATIONS.—The Secretary of the Navy shall prescribe regulations for the administration of this section.

(Added P.L. 105–261, § 1063(b)(1), Oct. 17, 1998, 112 Stat. 2130.)

CHAPTER 605—UNITED STATES NAVAL POSTGRADUATE SCHOOL

Sec.
7041. Function.
7042. Superintendent; assistants.
7043. Academic Dean.
7044. Civilian teachers: number; compensation.
7045. Officers of the other armed forces; enlisted members: admission.
7046. Officers of foreign countries: admission. 6611
7047. Students at institutions of higher education: admission.
7048. Conferring of degrees on graduates.
7049. Defense industry civilians: admission to defense product development program.

§ 7041. Function

There is a United States Naval Postgraduate School for the advanced instruction and technical education of commissioned officers of the naval service in their practical and theoretical duties.

(Aug. 10, 1956, ch. 1041, 70A Stat. 437.)

§ 7042. Superintendent; assistants

(a) The Secretary of the Navy shall detail as Superintendent of the Naval Postgraduate School an officer on the active-duty list in the line of the Navy eligible for command at sea not below the grade of captain. The Superintendent has military command of the Postgraduate School.

(b) The Secretary shall detail officers of the Navy and the Marine Corps of appropriate grades and qualifications to assist the Superintendent in—

(1) the advanced instruction and technical education of students; and

(2) the administration of the Postgraduate School.

(Aug. 10, 1956, ch. 1041, 70A Stat. 437; Dec. 12, 1980, P.L. 96–513, § 503(53), 94 Stat. 2915.)

§ 7043. Academic Dean

(a) There is at the Naval Postgraduate School the civilian position of Academic Dean. The Academic Dean shall be appointed, to serve for periods of not more than five years, by the Secretary of the Navy upon the recommendation of the Postgraduate School Council consisting of the Superintendent, the Deputy Superintendent, and the directors of the Technical, Administrative, and Professional Divisions of the school.

(b) The Academic Dean is entitled to such compensation for his services as the Secretary prescribes, but not more than the rate of compensation authorized for level IV of the Executive Schedule.

(Aug. 10, 1956, ch. 1041, 70A Stat. 437; Sept. 2, 1958, P.L. 85–861, § 1(148), 72 Stat. 1513; Aug. 11, 1966, P.L. 89–536, 80 Stat. 346; Dec. 12, 1980, P.L. 96–513, § 513(22), 94 Stat. 2932; P.L. 105–85, § 551(c), Nov. 18, 1997, 111 Stat. 1748.)

§ 7044. Civilian teachers: number; compensation

The Secretary of the Navy may employ as many civilians as he considers necessary to serve at the Naval Postgraduate School under the direction of the Superintendent as senior professors, professors, associate professors, assistant professors, and instructors. The Secretary shall prescribe the compensation of those persons.

(Aug. 10, 1956, ch. 1041, 70A Stat. 437.)

§ 7045. Officers of the other armed forces; enlisted members: admission

(a)(1) The Secretary of the Navy may permit officers of the Army, Air Force, and Coast Guard to receive instruction at the Naval Postgraduate School. The numbers and grades of such officers shall be as agreed upon by the Secretary of the Navy with the Secretaries of the Army, Air Force, and Transportation, respectively.

(2) The Secretary may permit an enlisted member of the armed forces who is assigned to the Naval Postgraduate School or to a nearby command to receive instruction at the Naval Postgraduate School. Admission of enlisted members for instruction under this paragraph shall be on a space-available basis.

(b) The Department of the Army, the Department of the Air Force, and the Department of Transportation shall bear the cost of the instruction received by officers detailed for that instruction by the Secretaries of the Army, Air Force, and Transportation, respectively. In the case of an enlisted member permitted to receive instruction at the Postgraduate School, the Secretary of the Navy shall charge that member only for such costs and fees as the Secretary considers appropriate (taking into consideration the admission of enlisted members on a space-available basis).

(c) While receiving instruction at the Postgraduate School, members of the Army, Air Force, and Coast Guard are subject to such regulations, as determined appropriate by the Secretary of the Navy, as apply to students who are members of the naval service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 437; Dec. 12, 1980, P.L. 96–513, § 513(23), 94 Stat. 2932; amended P.L. 105–85, § 551(a), (b)(1), Nov. 18, 1997, 111 Stat. 1747–1748; P.L. 105–261, § 1069(a)(6), Oct. 17, 1998, 112 Stat. 2136.)

§ 7046. Officers of foreign countries: admission

(a) The Secretary of the Navy, upon authorization of the President, may permit commissioned officers of the military services of foreign countries to receive instruction at the Naval Postgraduate School.

(b) Officers receiving instruction under this section are subject to the same regulations governing attendance, discipline, discharge, and standards of study as apply to students who are officers of the United States naval service.

(c) No officer of a foreign country is entitled to an appointment in the Navy or the Marine Corps by reason of his completion of the prescribed course of study at the Postgraduate School.

(Aug. 10, 1956, ch. 1041, 70A Stat. 438.)

§ 7047. Students at institutions of higher education: admission

(a) ADMISSION PURSUANT TO RECIPROCAL AGREEMENT.—The Secretary of the Navy may enter into an agreement with an accredited institution of higher education to permit a student described in subsection (b) enrolled at that institution to receive instruction at the Naval Postgraduate School on a tuition-free basis. In exchange for the admission of the student, the institution of higher education shall be required to permit an officer of the armed forces to attend on a tuition-free basis courses offered by that institution corresponding in length to the instruction provided to the student at the Naval Postgraduate School.

(b) ELIGIBLE STUDENTS.—A student enrolled at an institution of higher education that is party to an agreement under subsection (a) may be admitted to the Naval Postgraduate School pursuant to that agreement if—

(1) the student is a citizen of the United States or lawfully admitted for permanent residence in the United States; and

(2) the Secretary of the Navy determines that the student has a demonstrated ability in a field of study designated by the Secretary as related to naval warfare and national security.

(Added P.L. 102–484, § 1073(a), Oct. 23, 1992, 106 Stat. 2510 [former § 7047 redesignated as § 7048].)

§ 7048. Conferring of degree on graduates

(a) The Superintendent of the Naval Postgraduate School, under regulations prescribed by the Secretary of the Navy, may confer on any qualified graduate a bachelor's, master's, or doctor's degree in engineering or a related field.

(b) A degree may not be conferred under this section unless the curriculum leading to that degree is accredited by the appropriate professional authority.

(Aug. 10 1956, § 7047, ch. 1041, 70A Stat. 438; redesignated § 7048 P.L. 102–484, § 1073(a)(1), Oct. 23, 1992, 106 Stat. 2510).

§ 7049. Defense industry civilians: admission to defense product development program [1]

(a) AUTHORITY FOR ADMISSION.—The Secretary of the Navy may permit eligible defense industry employees to receive instruc-

[1] Section 535(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (P.L. 106–398; 114 Stat. 1654A–113) provides:

(b) PROGRAM EVALUATION AND REPORT.—(1) Before the start of the fourth year of instruction, but no earlier than the start of the third year of instruction, of defense industry employees at the Naval Postgraduate School under section 7049 of title 10, United States Code, as added by subsection (a), the Secretary of the Navy shall conduct an evaluation of the admission of such students under that section. The evaluation shall include the following:

(A) An assessment of whether the authority for instruction of nongovernment civilians at the school has resulted in a discernible benefit for the Government.

(B) Determination of whether the receipt and disposition of funds received by the school as tuition for instruction of such civilians at the school have been properly identified in records of the school.

(C) A summary of the disposition and uses made of those funds.

(D) An assessment of whether instruction of such civilians at the school is in the best interests of the Government.

(2) Not later than 30 days after completing the evaluation referred to in paragraph (1), the Secretary of the Navy shall submit to the Secretary of Defense a report on the program under such section. The report shall include—

(A) the results of the evaluation under paragraph (1);

tion at the Naval Postgraduate School in accordance with this section. Any such defense industry employee may only be enrolled in, and may only be provided instruction in, a program leading to a master's degree in a curriculum related to defense product development. No more than 10 such defense industry employees may be enrolled at any one time. Upon successful completion of the course of instruction in which enrolled, any such defense industry employee may be awarded an appropriate degree under section 7048 of this title.

(b) ELIGIBLE DEFENSE INDUSTRY EMPLOYEES.—For purposes of this section, an eligible defense industry employee is an individual employed by a private firm that is engaged in providing to the Department of Defense significant and substantial defense-related systems, products, or services. A defense industry employee admitted for instruction at the school remains eligible for such instruction only so long as that person remains employed by the same firm.

(c) ANNUAL CERTIFICATION BY THE SECRETARY OF THE NAVY.—Defense industry employees may receive instruction at the school during any academic year only if, before the start of that academic year, the Secretary of the Navy determines, and certifies to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, that providing instruction to defense industry employees under this section during that year—

(1) will further the military mission of the school;

(2) will enhance the ability of the Department of Defense and defense-oriented private sector contractors engaged in the design and development of defense systems to reduce the product and project lead times required to bring such systems to initial operational capability; and

(3) will be done on a space-available basis and not require an increase in the size of the faculty of the school, an increase in the course offerings of the school, or an increase in the laboratory facilities or other infrastructure of the school.

(d) PROGRAM REQUIREMENTS.—The Secretary of the Navy shall ensure that—

(1) the curriculum for the defense product development program in which defense industry employees may be enrolled under this section is not readily available through other schools and concentrates on defense product development functions that are conducted by military organizations and defense contractors working in close cooperation; and

(2) the course offerings at the school continue to be determined solely by the needs of the Department of Defense.

(e) TUITION.—The Superintendent of the school shall charge tuition for students enrolled under this section at a rate not less

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(B) the Secretary's conclusions and recommendation with respect to continuing to allow nongovernment civilians to receive instruction at the Naval Postgraduate School as part of a program related to defense product development; and

(C) any proposals for legislative changes recommended by the Secretary.

(3) Not later than 60 days after receiving the report of the Secretary of the Navy under paragraph (2), the Secretary of Defense shall submit the report, together with any comments that the Secretary considers appropriate, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

than the rate charged for employees of the United States outside the Department of the Navy.

(f) STANDARDS OF CONDUCT.—While receiving instruction at the school, students enrolled under this section, to the extent practicable, are subject to the same regulations governing academic performance, attendance, norms of behavior, and enrollment as apply to Government civilian employees receiving instruction at the school.

(g) USE OF FUNDS.—Amounts received by the school for instruction of students enrolled under this section shall be retained by the school to defray the costs of such instruction. The source, and the disposition, of such funds shall be specifically identified in records of the school.

(Added P.L. 106–398, § 1[535(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–112.)

CHAPTER 607—RETIREMENT OF CIVILIAN MEMBERS OF THE TEACHING STAFFS OF THE UNITED STATES NAVAL ACADEMY AND UNITED STATES NAVAL POSTGRADUATE SCHOOL

Sec.
7081. Civilian member; definition; exceptions.
7082. Deferred annuity policy required.
7083. Annuity premium to be paid by monthly installments; government reimbursement.
7084. Age of retirement.
7085. Computation of life annuity.
7086. Physical disability retirement.
7087. Election of annuity for self and beneficiary.
7088. Regulations.

§ 7081. Civilian member: definition; exceptions

(a) In this chapter, the term "civilian member" means a civilian member of the teaching staff of the United States Naval Academy or the United States Naval Postgraduate School. It includes the Academic Dean of the Postgraduate School, senior professors, professors, associate professors, assistant professors, chief instructors, assistant chief instructors, and instructors.

(b) This chapter does not apply to any civilian member who was employed at the Naval Academy or the Postgraduate School on January 16, 1936, and who did not elect to participate in the benefits provided by the Act of January 16, 1936, ch. 3 (49 Stat. 1092).

(c) This chapter does not apply to any person who was a civilian member after September 30, 1956.

(Aug. 10, 1956, ch. 1041, 70A Stat. 438; Sept. 2, 1958, P.L. 85–861, § 1(149), 72 Stat. 1513; Nov. 29, 1989, P.L. 101–189, § 1622(e)(8), 103 Stat. 1605.)

§ 7082. Deferred annuity policy required

Each civilian member, as a part of his contract of employment, shall carry, during his employment, a deferred annuity policy, having no cash surrender or loan provision, in a joint-stock life insurance corporation that is incorporated under the laws of a State and has a charter restriction that its business must be conducted without profit to its stockholders.

(Aug. 10, 1956, ch. 1041, 70A Stat. 439.)

§ 7083. Annuity premium to be paid by monthly installments; government reimbursement

Each civilian member shall make a monthly allotment in an amount equal to 10 percent of his monthly basic salary toward the purchase of his deferred annuity policy. For each month the allotment is in force, the pay account of the civilian member shall be credited monthly from appropriations made for this purpose with an additional amount equal to 5 percent of his monthly basic salary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 439; Nov. 2, 1966, P.L. 89–718, § 39, 80 Stat. 1120.)

§ 7084. Age of retirement

A civilian member may be retired at any time after his sixty-fifth birthday, and shall be retired by June 30 following that birthday. However, in any special case the Secretary of the Navy may defer the retirement of a member until a date not later than the member's seventieth birthday.

(Aug. 10, 1956, ch. 1041, 70A Stat. 439.)

§ 7085. Computation of life annuity

Each civilian member who retires under section 7084 of this title is entitled to a life annuity computed by multiplying his average annual compensation during any five consecutive years of allowable service, at his option, by his number of years of service, not exceeding 35, and dividing the product by 70. The retirement annuity payable to a retired civilian member under a policy required by section 7082 of this title is counted as part of the retirement annuity provided in this section. Any difference between the amount received by the retired civilian member under his annuity policy and the total annual amount to which he is entitled under this section shall be paid to him by the Secretary of the Navy from appropriations made for this purpose.

(Aug. 10, 1956, ch. 1041, 70A Stat. 439.)

§ 7086. Physical disability retirement

(a) Each civilian member who has served not less than five years, and who, before reaching the age of 65, becomes totally disabled for useful and efficient service in his position, by reason of disease or injury not due to his own vicious habits, intemperance, or willful misconduct shall, upon his application or upon the request of the Secretary of the Navy, be retired with a life annuity computed under section 7085 of this title.

(b) The amount that the Secretary shall pay annually under this section is the difference between the total amount to which the retired member is entitled under subsection (a) and the immediate life annuity to which he is entitled at the time of his disability retirement under the annuity policy required by section 7082 of this title.

(c) Each civilian member retired under this section, unless the disability for which he was retired is permanent in character, shall be examined by a board of medical officers designated by the Superintendent of the Naval Academy or of the Postgraduate

School, as appropriate, one year after his retirement and annually thereafter, until he becomes 65 years of age.

(d) Payments by the Secretary under this section shall be terminated if the retired civilian member is found to be sufficiently recovered for useful and efficient service in his former position and is offered reemployment in that position by the Superintendent.

(e) If a civilian member retired under this section is later reemployed by the United States, the payments by the Secretary shall be terminated.

(f) Each civilian member retired under this section who is reemployed as a civilian member of the teaching staff of the Naval Academy or the Naval Postgraduate School shall, upon his later retirement, be paid annually by the Secretary the difference between the total annual amount computed under section 7085 of this title and the immediate life annuity which the total premiums paid on his annuity contracts would buy.

(g) No person may receive payments from the Secretary of the Navy under this chapter and, for the same period of time, compensation under chapter 81 of title 5.

(Aug. 10, 1956, ch. 1041, 70A Stat. 439; Nov. 2, 1966, P.L. 89–718, § 40, 80 Stat. 1120.)

§ 7087. Election of annuity for self and beneficiary

(a) At the time of his retirement, a civilian member retiring under this chapter may elect to receive instead of the amount payable annually by the Secretary of the Navy under section 7085 or 7086 of this title a reduced annuity for his life and an annuity payable after his death to his beneficiary in either—

(1) an amount equal to his reduced annuity; or

(2) an amount equal to 50 percent of his reduced annuity.

The annuities payable to principal and beneficiary, under either election, shall be in amounts that have, on the date of the retirement of the civilian member, a combined actuarial value equal to the actuarial value of the annuity payable by the Secretary under section 7085 or 7086 of this title, as determined under actuarial tables prepared by the Director of the Office of Personnel Management.

(b) If the civilian member elects to take a reduced annuity under this section, he shall, at the time of his retirement, designate the beneficiary in writing and file the designation with the Secretary.

(c) The annuity payable under this section to the beneficiary of a deceased civilian member shall be terminated upon the death of the beneficiary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 440; Oct. 12, 1982, P.L. 97–295, § 1(45), 96 Stat. 1298.)

§ 7088. Regulations

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

(Aug. 10, 1956, ch. 1041, 70A Stat. 441.)

CHAPTER 609—PROFESSIONAL MILITARY EDUCATION SCHOOLS

Sec.
7101. Naval War College: master of arts in national security and strategic studies.
7102. Marine Corps University: master of military studies.

§ 7101. Naval War College: master of arts in national security and strategic studies

(a) AUTHORITY.—Upon the recommendation of the faculty of the Naval War College, the President of the college may confer the degree of master of arts in national security and strategic studies upon graduates of the college who fulfill the requirements for the degree.

(b) REGULATIONS.—The authority provided by subsection (a) shall be exercised under regulations prescribed by the Secretary of the Navy.

(c) NAVAL WAR COLLEGE DEFINED.—In this section, the term "Naval War College" means the College of Naval Warfare and the College of Naval Command and Staff.

(Added P.L. 101–510, § 912(a), Nov. 5, 1990, 104 Stat. 1626.)

§ 7102. Marine Corps University: master of military studies

(a) AUTHORITY.—Upon the recommendation of the Director and faculty of the Command and Staff College of the Marine Corps University, the President of the Marine Corps University may confer the degree of master of military studies upon graduates of the college who fulfill the requirements for the degree.

(b) REGULATIONS.—The authority provided by subsection (a) shall be exercised under regulations prescribed by the Secretary of the Navy.

(Added P.L. 103–337, § 911(a), Oct. 5, 1994, 108 Stat. 2828.)

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7207. Administration of liberated and occupied areas.
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7212. Employment of outside architects and engineers.
[7213. Repealed.]
7214. Apprehension of deserters and prisoners; operation of shore patrols.
[7215. Repealed.]
7216. Collection, preservation, and display of captured flags.
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7220. Gifts for welfare of enlisted members.
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7222. Naval Historical Center Fund: references to Fund.
7223. Acquisition of land for radio stations and for other purposes.
7224. Transportation on naval vessels during wartime.
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7227. Foreign naval vessels and aircraft: supplies and services.
7228. Merchant vessels: supplies.
7229. Purchase of fuel.
[7230. Repealed.]
7231. Accounting for expenditures for obtaining information.
7233. Auxiliary vessels: extended lease authority.

[§ 7201. Repealed. P.L. 103–160, § 824(a)(1), Nov. 30, 1993, 107 Stat. 1707]

[§ 7202. Repealed. P.L. 94–106, § 804(b), Oct. 7, 1975, 89 Stat. 538]

[§ 7203. Repealed. P.L. 103–355, § 3025(b), Oct. 13, 1994, 108 Stat. 3334]

§ 7204. Schools near naval activities: financial aid

(a) The Secretary of the Navy may contribute, out of funds specifically appropriated for the purpose, to the support of schools in any locality where a naval activity is located if he finds that the schools available in the locality are inadequate for the welfare of the dependents of—

(1) members of the naval service;

(2) civilian officers and employees of the Department of the Navy;

(3) members of the Coast Guard when it is operating as a service in the Navy; and

(4) members of the National Oceanic and Atmospheric Administration serving with the Navy;

who are stationed at the activity.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 442; Nov. 2, 1966, P.L. 89–718, § 8(a), 80 Stat. 1117; Dec. 12, 1980, P.L. 96–513, § 513(24), 94 Stat. 2932; Oct. 19, 1984, P.L. 98–525, § 1401(j)(3), 98 Stat. 2620; Nov. 8, 1985, P.L. 99–145, § 1303(a)(23), 99 Stat. 739.)

§ 7205. Promotion of health and prevention of accidents

(a) The Secretary of the Navy may make such expenditures as he considers appropriate to prevent accidents and to promote the safety and occupational health of—

(1) members of the naval service on active duty;

(2) civilian officers and employees of the Department of the Navy;

(3) members of the Coast Guard when it is operating as a service in the Navy; and

(4) members of the National Oceanic and Atmospheric Administration serving with the Navy.

The expenditures may include payments for clothing, equipment, and other materials necessary for the purposes of this section. Any appropriation available for the activities in which the personnel are engaged shall be available for these purposes.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 443; Nov. 2, 1966, P.L. 89–718, § 8(a), 80 Stat. 1117; Dec. 12, 1980, P.L. 96–513, § 513(24), 94 Stat. 2932.)

[§ 7206. Repealed. P.L. 85–861, § 36B(22), Sept. 2, 1958, 72 Stat. 1571]

§ 7207. Administration of liberated and occupied areas

(a) The Secretary of the Navy may, out of any appropriation made for the purpose, provide for the administration of liberated and occupied areas by the Department of the Navy.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 443.)

[§ 7208. Repealed. P.L. 98–525, § 1401(d)(3), Oct. 19, 1984, 98 Stat. 2616]

[§ 7209. Repealed. P.L. 100–370, § 1(e)(3), July 19, 1988, 102 Stat. 845]

[§ 7210. Repealed. P.L. 103–160, § 824(a)(2), Nov. 30, 1993, 107 Stat. 1707]

§ 7211. Attendance at meetings of technical, professional, or scientific organizations

(a) The Secretary of the Navy may authorize—

(1) members of the naval service on active duty;

(2) civilian officers and employees of the Department of the Navy;

(3) members of the Coast Guard when it is operating as a service in the Navy; and

(4) members of the National Oceanic and Atmospheric Administration serving with the Navy;

to attend meetings of technical, professional, scientific, and similar organizations, if the Secretary believes that their attendance will benefit the Department. The personnel may be reimbursed for their expenses at the rates prescribed by law.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 444; Nov. 2, 1966, P.L. 89–718, § 8(a), 80 Stat. 1117; Dec. 12, 1980, P.L. 96–513, § 513(24), 94 Stat. 2932.)

§ 7212. Employment of outside architects and engineers

(a) Whenever the Secretary of the Navy believes that the existing facilities of the Department of the Navy are inadequate and he considers it advantageous to national defense, he may employ, by contract or otherwise, without advertising and without reference to sections 305, 3324, and 7204, chapter 51, and subchapters III, IV, and VI of chapter 53 of title 5, architectural or engineering corporations, or firms, or individual architects or engineers, to produce designs, plans, drawings, and specifications for the accomplishment of any naval public works or utilities project or for the construction of any vessel or aircraft, or part thereof.

(b) The fee for any service under this section may not exceed 6 percent of the estimated cost, as determined by the Secretary, of the project to which the fee applies.

(Aug. 10, 1956, ch. 1041, 70A Stat. 444; Nov. 2, 1966, P.L. 89–718, § 28, 80 Stat. 1119; Oct. 13, 1978, P.L. 95–454, § 703(c)(3), § 801(a)(3)(I), 92 Stat. 1217, 1222; Dec. 12, 1980, P.L. 96–513, § 513(25), 94 Stat. 2932.)

[§ 7213. Repealed. P.L. 103–160, § 824(a)(3), Nov. 30, 1993, 107 Stat. 1707]

§ 7214. Apprehension of deserters and prisoners; operation of shore patrols

(a) The Secretary of the Navy may make such expenditures out of available appropriations as he considers necessary to—

(1) apprehend and deliver deserters, stragglers, and prisoners; and

(2) operate shore patrols.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 445.)

[§ 7215. Repealed. P.L. 90–377, § 6(2), July 5, 1968, 82 Stat. 288]

§ 7216. Collection, preservation, and display of captured flags

The Secretary of the Navy shall collect all flags, standards, and colors taken by the Navy or the Marine Corps from enemies of the United States. These flags, standards, and colors shall be delivered to the President. Under his direction they shall be preserved and displayed in any public place he considers proper.

(Aug. 10, 1956, ch. 1041, 70A Stat. 445.)

[§ 7217. Repealed. P.L. 101–510, § 1322(a)(15), Nov. 5, 1990, 104 Stat. 1672]

[§ 7218. Repealed. P.L. 89–529, § 1(3), Aug. 11, 1966, 80 Stat. 339; P.L. 97–295, § 1(46), Oct. 12, 1982, 96 Stat. 1298]

§ 7219. Leases of waterfront property from States or municipalities

In leasing waterfront property from a State or municipality, the Secretary of the Navy may provide in the lease, where it is required by state law or municipal charter, that, as part or all of the consideration, any improvements placed upon the property by the United States become the property of the lessor when the lease, including any renewal, ends.

(Aug. 10, 1956, ch. 1041, 70A Stat. 446.)

§ 7220. Gifts for welfare of enlisted members

The Secretary of the Navy may accept gifts for use in providing recreation, amusement, and contentment for enlisted members of the naval service. The fund "Ships' Stores Profits, Navy" shall be credited with these gifts.

(Aug. 10, 1956, ch. 1041, 70A Stat. 446.)

§ 7221. Acceptance and care of gifts to vessels

The Secretary of the Navy may accept and care for such gifts of silver, colors, books, or other articles of equipment or furniture as, in accordance with custom, are made to vessels of the Navy. Necessary expenses incident to the care of gifts that are accepted shall be paid from the appropriation for the maintenance and operation of vessels.

(Aug. 10, 1956, ch. 1041, 70A Stat. 446.)

§ 7222. Naval Historical Center Fund: references to Fund [1]

Any reference in a law, regulation, document, paper, or other record of the United States to the Naval Historical Center Fund formerly maintained under this section shall be deemed to refer to the Department of the Navy General Gift Fund maintained under section 2601 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 446; Sept. 23, 1996, P.L. 104–201, § 1073(b)(1), (2)(A), 110 Stat. 2657; Oct. 30, 2000, P.L. 106–398, § 1[942(d)(2)], 114 Stat. 1654, 1654A–242.)

§ 7223. Acquisition of land for radio stations and for other purposes

Land of the United States that is under the control of any department or agency of the United States may be mutually selected as a site for a naval radio station by the Secretary of the Navy and the head of the department or agency having control of the land. By direction of the President, land so selected may be transferred to and placed under the jurisdiction of the Department of the Navy for use as a naval radio station or for any other naval purpose.

(Aug. 10, 1956, ch. 1041, 70A Stat. 447.)

§ 7224. Transportation on naval vessels during wartime

In time of war or during a national emergency declared by the President, such persons as the Secretary of the Navy authorizes by regulation may be transported and subsisted on naval vessels at Government expense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 447.)

§ 7225. Naval Reserve flag

The Secretary of the Navy shall prescribe a suitable flag to be known as the Naval Reserve flag. This flag may be flown by a seagoing merchant vessel if—

(1) the vessel is documented under the laws of the United States;

(2) the vessel has been designated by the Secretary, under such regulations as he prescribes, as suitable for service as a naval auxiliary in time of war; and

(3) the master or commanding officer and at least half of the other licensed officers of the vessel are members of the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 447.)

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[1] Section 942(a) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (P.L. 106–398; 114 Stat. 1654A–241) provides:

(a) MERGER OF NAVAL HISTORICAL CENTER FUND INTO DEPARTMENT OF THE NAVY GENERAL GIFT FUND.—(1) The Secretary of the Navy shall transfer all amounts in the Naval Historical Center Fund maintained under section 7222 of title 10, United States Code, to the Department of the Navy General Gift Fund maintained under section 2601 of such title. Upon completing the transfer, the Secretary shall close the Naval Historical Center Fund.

(2) Amounts transferred to the Department of the Navy General Gift Fund under this subsection shall be merged with other amounts in that Fund and shall be available for the purposes for which amounts in that Fund are available.

§ 7226. Naval Reserve yacht pennant

The Secretary of the Navy shall prescribe a suitable pennant to be known as the Naval Reserve yacht pennant. This pennant may be flown by a yacht or similar vessel if—

(1) the vessel is documented under the laws of the United States;

(2) the vessel has been designated by the Secretary, under such regulations as he prescribes, as suitable for service as a naval auxiliary in time of war; and

(3) the captain or owner of the vessel is a member of the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 447.)

§ 7227. Foreign naval vessels and aircraft: supplies and services

(a) The Secretary of the Navy, under such regulations as he prescribes, may authorize any United States naval vessel or activity to furnish any of the following supplies or services, when in the best interests of the United States, on a reimbursable basis without an advance of funds if similar supplies and services are furnished on a like basis to naval vessels and military aircraft of the United States by the foreign country concerned:

(1) Routine port services in territorial waters of the United States or in waters under United States control, including pilotage, tugs, garbage removal, line-handling, and utilities, to naval vessels of foreign countries.

(2) Routine airport services, including landing and takeoff assistance, use of runways, parking and servicing, to military aircraft of foreign countries.

(3) Miscellaneous supplies, including fuel, provisions, spare parts, and general stores, but not including ammunition, to naval vessels and military aircraft of foreign countries.

(4) Overhauls, repairs, and alterations together with necessary equipment and its installation required in connection therewith, to naval vessels and military aircraft of foreign countries.

(b)(1) Routine port and airport services may be furnished under this section at no cost to the foreign country concerned where such services are provided by United States naval personnel and equipment without direct cost to the Navy.

(2) When furnishing routine port services under this section to naval vessels of a foreign country, the Secretary may furnish such services without reimbursement if such services are provided under an agreement that provides for the reciprocal furnishing by such country of routine port services to naval vessels of the United States without reimbursement. When furnishing routine airport services under this section to military aircraft of a foreign country, the Secretary may furnish such services without reimbursement if such services are provided under an agreement that provides for the reciprocal furnishing by such country of routine airport services to military aircraft of the United States without reimbursement.

(3) If routine port or airport services are furnished under this section by a working-capital fund activity of the Navy established

under section 2208 of this title and such activity is not reimbursed directly for the costs incurred by the activity in furnishing those services by reason of paragraph (2), the working-capital fund activity shall be reimbursed for such costs out of operating funds currently available to the Navy.

(c) Payments for supplies and services furnished under this section may be credited to current appropriations so as to be available for the same purpose as the appropriation initially charged.

(Aug. 10, 1956, ch. 1041, 70A Stat. 447; June 23, 1959, P.L. 86–55, § 1, 73 Stat. 89; Sept. 24, 1983, P.L. 98–94, § 1219(a), 97 Stat. 691; Oct. 19, 1984, P.L. 98–525, § 1405(49), 98 Stat. 2625; Dec. 5, 1991, P.L. 102–190, § 1048, 105 Stat. 1468.)

§ 7228. Merchant vessels: supplies

(a) The Secretary of the Navy, under such regulations as he prescribes, may sell to a merchant ship such fuel and other supplies as may be required to meet its necessities if the ship is unable—

(1) to procure the supplies from other sources at its present location; and

(2) to proceed to the nearest port where they may be obtained without endangering the safety of the ship, the health and comfort of its personnel, or the safe condition of the property carried on it.

(b) Sales under this section shall be at such prices as the Secretary considers reasonable. Payment shall be made on a cash basis or on such other basis as will reasonably assure prompt payment. Amounts received from such a sale shall, unless otherwise directed by another provision of law, be credited to the current appropriation concerned and are available for the same purposes as that appropriation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 448.)

§ 7229. Purchase of fuel

In buying fuel, the Secretary of the Navy may, in any manner he considers proper, buy the kind of fuel that is best adapted to the purpose for which it is to be used.

(Aug. 10, 1956, ch. 1041, 70A Stat. 448.)

[§ 7230. Repealed. P.L. 103–160, § 824(a)(4), Nov. 30, 1993, 107 Stat. 1707]

§ 7231. Accounting for expenditures for obtaining information

When the Secretary of the Navy decides that an expenditure by the Department of the Navy from an appropriation for obtaining information from anywhere in the world may be made public, the expenditure shall be accounted for specifically. When the Secretary decides that an expenditure should not be made public, the Secretary shall make a certificate on the amount of the expenditure. The certificate is a sufficient voucher for the amount stated to have been spent.

(Added P.L. 97–258, § 2(b)(11)(B), Sept. 13, 1982, 96 Stat. 1057.)

§ 7233. Auxiliary vessels: extended lease authority

(a) AUTHORIZED CONTRACTS.—Subject to subsection (b), the Secretary of the Navy may enter into contracts with private United States shipyards for the construction of new surface vessels to be acquired on a long-term lease basis by the United States from the shipyard or other private person for any of the following:

(1) The combat logistics force of the Navy.

(2) The strategic sealift force of the Navy.

(3) Other auxiliary support vessels for the Department of Defense.

(b) CONTRACTS REQUIRED TO BE AUTHORIZED BY LAW.—A contract may be entered into under subsection (a) with respect to a specific vessel only if the Secretary is specifically authorized by law to enter into such a contract with respect to that vessel. As part of a request to Congress for enactment of any such authorization by law, the Secretary of the Navy shall provide to Congress the Secretary's findings under subsection (g).

(c) TERM OF CONTRACT.—In this section, the term "long-term lease" means a lease, bareboat charter, or conditional sale agreement with respect to a vessel the term of which (including any option period) is for a period of 20 years or more.

(d) OPTION TO BUY.—A contract entered into under subsection (a) may include options for the United States to purchase one or more of the vessels covered by the contract at any time during, or at the end of, the contract period (including any option period) upon payment of an amount equal to the lesser of (1) the unamortized portion of the cost of the vessel plus amounts incurred in connection with the termination of the financing arrangements associated with the vessel, or (2) the fair market value of the vessel.

(e) DOMESTIC CONSTRUCTION.—The Secretary shall require in any contract entered into under this section that each vessel to which the contract applies—

(1) shall have been constructed in a shipyard within the United States; and

(2) upon delivery, shall be documented under the laws of the United States.

(f) VESSEL OPERATION.—(1) The Secretary may operate a vessel held by the Secretary under a long-term lease under this section through a contract with a United States corporation with experience in the operation of vessels for the United States. Any such contract shall be for a term as determined by the Secretary.

(2) The Secretary may provide a crew for any such vessel using civil service mariners only after an evaluation taking into account—

(A) the fully burdened cost of a civil service crew over the expected useful life of the vessel;

(B) the effect on the private sector manpower pool; and

(C) the operational requirements of the Department of the Navy.

(g) CONTINGENT WAIVER OF OTHER PROVISIONS OF LAW.—(1) The Secretary may waive the applicability of subsections (e)(2) and (f) of section 2401 of this title to a contract authorized by law as

provided in subsection (b) if the Secretary makes the following findings with respect to that contract:

(A) The need for the vessels or services to be provided under the contract is expected to remain substantially unchanged during the contemplated contract or option period.

(B) There is a reasonable expectation that throughout the contemplated contract or option period the Secretary of the Navy (or, if the contract is for services to be provided to, and funded by, another military department, the Secretary of that military department) will request funding for the contract at the level required to avoid contract cancellation.

(C) The timeliness of consideration of the contract by Congress is such that such a waiver is in the interest of the United States.

(2) The Secretary shall submit a notice of any waiver under paragraph (1) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(h) SOURCE OF FUNDS FOR TERMINATION LIABILITY.—If a contract entered into under this section is terminated, the costs of such termination may be paid from—

(1) amounts originally made available for performance of the contract;

(2) amounts currently available for operation and maintenance of the type of vessels or services concerned and not otherwise obligated; or

(3) funds appropriated for those costs.

(Added P.L. 106–65, § 1014(a)(1), Oct. 5, 1999, 113 Stat. 741.)

CHAPTER 633—NAVAL VESSELS [1]

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§ 7291. Classification

The President may establish, and from time to time modify, as the needs of the service require, a classification of naval vessels.

(Aug. 10, 1956, ch. 1041, 70A Stat. 448.)

§ 7292. Naming

(a) Not more than one vessel of the Navy may have the same name.

(b) Each battleship shall be named for a State. However, if the names of all the States are in use, a battleship may be named for a city, place, or person.

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[1] Section 1613(a) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (P.L. 101–189) provides:

(a) CATEGORY FOR FUNDING.—Any request submitted to Congress for appropriations for ship production engineering necessary to support the procurement of any ship included (at the time the request is submitted) in the five-year shipbuilding and conversion plan of the Navy shall be set forth in the Shipbuilding and Conversion account of the Navy (rather than in research and development accounts).

(c) The Secretary of the Navy may change the name of any vessel bought for the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 448.)

§ 7293. Number in service in time of peace

In time of peace, the President may keep in service such vessels of the Navy as are required and keep the rest in reserve.

(Aug. 10, 1956, ch. 1041, 70A Stat. 449.)

§ 7294. Suspension of construction in case of treaty

In case of a treaty for the limitation of naval armament to which the United States is a signatory, the President may suspend so much of the authorized naval construction as is necessary to bring the naval vessels of the United States within the limitations agreed upon. Such a suspension does not apply to vessels under construction at the time the suspension is made.

(Aug. 10, 1956, ch. 1041, 70A Stat. 449.)

§ 7295. Vessels: under-age

Vessels of the following types are considered under-age for the period after completion indicated below:

(1) Battleships—26 years.
(2) Aircraft carriers—20 years.
(3) Cruisers—20 years.
(4) Submarines—13 years.
(5) Other combatant surface vessels—16 years.

(Aug. 10, 1956, ch. 1041, 70A Stat. 449.)

[§ 7296. Repealed. P.L. 103–160, § 824(a)(5), Nov. 30, 1993, 107 Stat. 1707]

§ 7297. Changing category or type: limitations

Unless they have been specifically made available for the purpose, funds appropriated for the repair or alteration of naval vessels may not be used to make repairs or alterations of any vessel that would change its category or type.

(Aug. 10, 1956, ch. 1041, 70A Stat. 449.)

[§ 7298. Repealed. P.L. 103–160, § 824(a)(6), Nov. 30, 1993, 107 Stat. 1707]

§ 7299. Contracts: applicability of Walsh-Healey Act

Each contract for the construction, alteration, furnishing, or equipping of a naval vessel is subject to the Walsh-Healey Act (41 U.S.C. 35 et seq.) unless the President determines that this requirement is not in the interest of national defense.

(Added P.L. 104–106, § 815(a), Feb. 10, 1996, 110 Stat. 396 [former 7299 repealed by § 3023(a) of P.L. 103–355].)

§ 7299a. Construction of combatant and escort vessels and assignment of vessel projects

(a) The assignment of naval vessel conversion, alteration, and repair projects shall be based on economic and military considerations and may not be restricted by a requirement that certain

parts of naval shipwork be assigned to a particular type of shipyard or geographical area or by a similar requirement.

(b) In evaluating bids or proposals for a contract for the overhaul, repair, or maintenance of a naval vessel, the Secretary of the Navy shall, in determining the cost or price of work to be performed in an area outside the area of the homeport of the vessel, consider foreseeable costs of moving the vessel and its crew from the homeport to the outside area and from the outside area back to the homeport at the completion of the contract.

(c)(1) Before issuing a solicitation for a contract for short-term work for the overhaul, repair, or maintenance of a naval vessel, the Secretary of the Navy shall determine if there is adequate competition available among firms able to perform the work at the homeport of the vessel. If the Secretary determines that there is adequate competition among such firms, the Secretary—

(A) shall issue such a solicitation only to firms able to perform the work at the homeport of the vessel; and

(B) may not award such contract to a firm other than a firm that will perform the work at the homeport of the vessel.

(2) Paragraph (1) applies notwithstanding subsection (a) or any other provision of law.

(3) Paragraph (1) does not apply in the case of voyage repairs.

(4) In this subsection, the term "short-term work" means work that will be for a period of six months or less.

(Added P.L. 97–295, § 1(48)(A), Oct. 12, 1982, 96 Stat. 1298; amended P.L. 99–661, § 1201(a), Nov. 14, 1986, 100 Stat. 3967; P.L. 100–180, § 1101, Dec. 4, 1987, 101 Stat. 1145; P.L. 101–510, § 1422, Nov. 5, 1990, 104 Stat. 1682; P.L. 102–484, § 1016, Oct. 23, 1992, 106 Stat. 2485.)

§ 7300. Contracts for nuclear ships: sales of naval shipyard articles and services to private shipyards

The conditions set forth in section 2208(j)(1)(B) of this title and subsections (a)(1) and (c)(1)(A) of section 2563 of this title shall not apply to a sale by a naval shipyard of articles or services to a private shipyard that is made at the request of the private shipyard in order to facilitate the private shipyard's fulfillment of a Department of Defense contract with respect to a nuclear ship. This section does not authorize a naval shipyard to construct a nuclear ship for the private shipyard, to perform a majority of the work called for in a contract with a private entity, or to provide articles or services not requested by the private shipyard.

(Added P.L. 106–65, § 1016(a), Oct. 5, 1999, 113 Stat. 744; amended P.L. 106–398, § 1[1033(c)(3)], Oct. 30, 2000, 114 Stat. 1654, 1654A–261.)

[§ 7301. Repealed. P.L. 103–160, § 824(a)(7), Nov. 30, 1993, 107 Stat. 1707]

[§ 7302. Repealed. P.L. 103–355, § 3024(a), Oct. 13, 1994, 108 Stat. 3334]

§ 7303. Model Basin; investigation of hull designs

(a) An office or agency in the Department of the Navy designated by the Secretary of the Navy shall conduct at the David W. Taylor Model Basin, Carderock, Maryland, investigations to determine the most suitable shapes and forms for United States vessels and aircraft and investigations of other problems of their design.

(b) The Secretary of the Navy may authorize experiments to be made at the Model Basin for private persons. The costs of experiments made for private persons shall be paid by those persons under regulations prescribed by the Secretary. The results of private experiments are confidential and may not be divulged without the consent of the persons for whom they are made. However, the data obtained from such experiments may be used by the Secretary for governmental purposes, subject to the patent laws of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 451; Nov. 2, 1966, P.L. 89–718, § 41, 80 Stat. 1120.)

§ 7304. Examination of vessels; striking of vessels from Naval Vessel Register

(a) BOARDS OF OFFICERS TO EXAMINE NAVAL VESSELS.—The Secretary of the Navy shall designate boards of naval officers to examine naval vessels, including unfinished vessels, for the purpose of making a recommendation to the Secretary as to which vessels, if any, should be stricken from the Naval Vessel Register. Each vessel shall be examined at least once every three years if practicable.

(b) ACTIONS BY BOARD.—A board designated under subsection (a) shall submit to the Secretary in writing its recommendations as to which vessels, if any, among those it examined should be stricken from the Naval Vessel Register.

(c) ACTION BY SECRETARY.—If the Secretary concurs with a recommendation by a board that a vessel should be stricken from the Naval Vessel Register, the Secretary shall strike the name of that vessel from the Naval Vessel Register.

(Aug. 10, 1956, ch. 1041, 70A Stat. 451; revised in its entirety P.L. 103–160, § 824(b), Nov. 30, 1993, 107 Stat. 1708.)

§ 7305. Vessels stricken from Naval Vessel Register: sale

(a) APPRAISAL OF VESSELS STRICKEN FROM NAVAL VESSEL REGISTER.—The Secretary of the Navy shall appraise each vessel stricken from the Naval Vessel Register under section 7304 of this title.

(b) AUTHORITY TO SELL VESSEL.—If the Secretary considers that the sale of the vessel is in the national interest, the Secretary may sell the vessel. Any such sale shall be in accordance with regulations prescribed by the Secretary for the purposes of this section.

(c) PROCEDURES FOR SALE.—(1) A vessel stricken from the Naval Vessel Register and not subject to disposal under any other law may be sold under this section.

(2) In such a case, the Secretary may—

(A) sell the vessel to the highest acceptable bidder, regardless of the appraised value of the vessel, after publicly advertising the sale of the vessel for a period of not less than 30 days; or

(B) subject to paragraph (3), sell the vessel by competitive negotiation to the acceptable offeror who submits the offer that is most advantageous to the United States (taking into account price and such other factors as the Secretary determines appropriate).

(3) Before entering into negotiations to sell a vessel under paragraph (2)(B), the Secretary shall publish notice of the intention to do so in the Commerce Business Daily sufficiently in advance of initiating the negotiations that all interested parties are given a reasonable opportunity to prepare and submit proposals. The Secretary shall afford an opportunity to participate in the negotiations to all acceptable offerors submitting proposals that the Secretary considers as having the potential to be the most advantageous to the United States (taking into account price and such other factors as the Secretary determines appropriate).

(d) APPLICABILITY.—This section does not apply to a vessel the disposal of which is authorized by the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), if it is to be disposed of under that Act.

(Aug. 10, 1956, ch. 1041, 70A Stat. 451; Dec. 12, 1980, P.L. 96–513, 513(27), 94 Stat. 2933; revised in its entirety P.L. 103–160, § 824(b), Nov. 30, 1993, 107 Stat. 1708; amended P.L. 105–85, § 1021, Nov. 18, 1997, 111 Stat. 1875.)

§ 7306. Vessels stricken from Naval Vessel Register; captured vessels: transfer by gift or otherwise

(a) AUTHORITY TO MAKE TRANSFER.—Subject to subsections (c) and (d) of section 602 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 474), the Secretary of the Navy may transfer, by gift or otherwise, any vessel stricken from the Naval Vessel Register, or any captured vessel, to—

(1) any State, Commonwealth, or possession of the United States or any municipal corporation or political subdivision thereof;

(2) the District of Columbia; or

(3) any not-for-profit or nonprofit entity.

(b) VESSEL TO BE MAINTAINED IN CONDITION SATISFACTORY TO SECRETARY.—An agreement for the transfer of a vessel under subsection (a) shall include a requirement that the transferee will maintain the vessel in a condition satisfactory to the Secretary.

(c) TRANSFERS TO BE AT NO COST TO UNITED STATES.—Any transfer of a vessel under this section shall be made at no cost to the United States.

(d) CONGRESSIONAL NOTICE-AND-WAIT PERIOD.—(1) A transfer under this section may not take effect until—

(A) the Secretary submits to Congress notice of the proposed transfer; and

(B) 30 days of a session of Congress have expired following the date on which the notice is sent to Congress.

(2) For purposes of paragraph (1)(B)—

(A) the period of a session of Congress is broken only by an adjournment of Congress sine die at the end of the final session of a Congress; and

(B) any day on which either House of Congress is not in session because of an adjournment of more than 3 days to a

day certain, or because of an adjournment sine die at the end of the first session of a Congress, shall be excluded in the computation of such 30-day period.

(Aug. 10, 1956, ch. 1041, 70A Stat. 452; Nov. 8, 1965, P.L. 89–348, § 1(10), 79 Stat. 1311; Nov. 2, 1966, P.L. 89–718, &42, 80 Stat. 1120; Nov. 29, 1989, P.L. 101–189, § 1616, 103 Stat. 1602; revised in its entirety P.L. 103–160, § 824(b), Nov. 30, 1993, 107 Stat. 1709; P.L. 106–65, § 1011, Oct. 5, 1999, 113 Stat. 739.)

§ 7306a. Vessels stricken from Naval Vessel Register: use for experimental purposes

(a) AUTHORITY.—The Secretary of the Navy may use for experimental purposes any vessel stricken from the Naval Vessel Register.

(b) STRIPPING VESSEL.—(1) Before using a vessel for an experimental purpose pursuant to subsection (a), the Secretary shall carry out such stripping of the vessel as is practicable.

(2) Amounts received as proceeds from the stripping of a vessel pursuant to this subsection shall be credited to appropriations available for the procurement of scrapping services needed for such stripping. Amounts received which are in excess of amounts needed for procuring such services shall be deposited into the general fund of the Treasury.

(Added P.L. 103–160, § 824(b), Nov. 30, 1993, 107 Stat. 1709.)

§ 7307. Disposals to foreign nations

(a) LARGER OR NEWER VESSELS.—A naval vessel that is in excess of 3,000 tons or that is less than 20 years of age may not be disposed of to another nation (whether by sale, lease, grant, loan, barter, transfer, or otherwise) unless the disposition of that vessel is approved by law enacted after August 5, 1974. A lease or loan of such a vessel under such a law may be made only in accordance with the provisions of chapter 6 of the Arms Export Control Act (22 U.S.C. 2796 et seq.) or chapter 2 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2311 et seq.).

(b) OTHER VESSELS.—(1) A naval vessel not subject to subsection (a) may be disposed of to another nation (whether by sale, lease, grant, loan, barter, transfer, or otherwise) in accordance with applicable provisions of law, but only after—

(A) the Secretary of the Navy notifies the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives in writing of the proposed disposition; and

(B) 30 days of continuous session of Congress have expired following the date on which such notice is sent to those committees.

(2) For purposes of paragraph (1)(B), 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 30-day period.

(Aug. 10, 1956, ch. 1041, 70A Stat. 452; Aug. 5, 1974, P.L. 93–365, § 702, 88 Stat. 405; Oct. 5, 1976, P.L. 94–457, § 2, 90 Stat. 1938; Dec. 12, 1980, P.L. 96–513, § 513(28), 94 Stat. 2933; Aug. 8, 1985, P.L. 99–83, § 122, 99 Stat. 204; Nov. 5, 1990, P.L. 101–510, 1484(b)(4), 104 Stat. 1716; revised in its entirety P.L. 103–160, § 824(b), Nov. 30, 1993, 107 Stat. 1709; P.L. 104–106, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 7308. Chief of Naval Operations: certification required for disposal of combatant vessels

Notwithstanding any other provision of law, no combatant vessel of the Navy may be sold, transferred, or otherwise disposed of unless the Chief of Naval Operations certifies that it is not essential to the defense of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 453; Dec. 12, 1980, P.L. 96–513, § 513(29), 94 Stat. 2933; Sept. 29, 1988, P.L. 100–456, § 1234(a), 102 Stat. 2059; Nov. 5, 1990, P.L. 101–510, 1427, 104 Stat. 1685; revised in its entirety P.L. 103–160, § 824(b), Nov. 30, 1993, 107 Stat. 1710.)

§ 7309. Construction of vessels in foreign shipyards: prohibition

(a) PROHIBITION.—Except as provided in subsection (b), no vessel to be constructed for any of the armed forces, and no major component of the hull or superstructure of any such vessel, may be constructed in a foreign shipyard.

(b) PRESIDENTIAL WAIVER FOR NATIONAL SECURITY INTEREST.—(1) The President may authorize exceptions to the prohibition in subsection (a) when the President determines that it is in the national security interest of the United States to do so.

(2) The President shall transmit notice to Congress of any such determination, and no contract may be made pursuant to the exception authorized until the end of the 30-day period beginning on the date on which the notice of the determination is received by Congress.

(c) EXCEPTION FOR INFLATABLE BOATS.—An inflatable boat or a rigid inflatable boat, as defined by the Secretary of the Navy, is not a vessel for the purpose of the restriction in subsection (a).

(Added P.L. 97–252, § 1127(a), Sept. 8, 1982, 96 Stat. 758; amended P.L. 98–473, § 101(h) [§ 8095], Oct. 12, 1984, 98 Stat. 1941; P.L. 99–145, § 1303(a)(24)(A), Nov. 8, 1985, 99 Stat. 740; P.L. 100–180, § 1103, Dec. 4, 1987, 101 Stat. 1146; P.L. 100–456, § 1224, Sept. 29, 1988, 102 Stat. 2054; P.L. 101–189, § 1622(c)(8), Nov. 29, 1989, 103 Stat. 1604, P.L. 102–190, § 1017, Dec. 5, 1991, 105 Stat. 1459; P.L. 102–484, § 1012, Oct. 23, 1992, 106 Stat. 2483; revised in its entirety P.L. 103–160, § 824(b), Nov. 30, 1993, 107 Stat. 1710.)

§ 7310. Overhaul, repair, etc. of vessels in foreign shipyards: restrictions

(a) VESSELS WITH HOMEPORT IN UNITED STATES.—A naval vessel (or any other vessel under the jurisdiction of the Secretary of the Navy) the homeport of which is in the United States may not be overhauled, repaired, or maintained in a shipyard outside the United States or Guam, other than in the case of voyage repairs.

(b) VESSEL CHANGING HOMEPORTS.—(1) In the case of a naval vessel the homeport of which is not in the United States (or a territory of the United States), the Secretary of the Navy may not during the 15-month period preceding the planned reassignment of the vessel to a homeport in the United States (or a territory of the United States) begin any work for the overhaul, repair, or maintenance of the vessel that is scheduled to be for a period of more than six months.

(2) In the case of a naval vessel the homeport of which is in the United States (or a territory of the United States), the Secretary of the Navy shall during the 15-month period preceding the planned reassignment of the vessel to a homeport not in the United States (or a territory of the United States) perform in the United

States (or a territory of the United States) any work for the overhaul, repair, or maintenance of the vessel that is scheduled—

(A) to begin during the 15-month period; and

(B) to be for a period of more than six months.

(Added P.L. 97–295, § 1(49)(A), Oct. 12, 1982, 96 Stat. 1298; revised in its entirety and amended P.L. 103–160, §§ 367, 824(b), Nov. 30, 1993, 107 Stat. 1632, 1710; P.L. 104–106, § 1017, Feb. 10, 1996, 110 Stat. 425.)

§ 7311. Repair or maintenance of naval vessels: handling of hazardous waste

(a) CONTRACTUAL PROVISIONS.—The Secretary of the Navy shall ensure that each contract entered into for work on a naval vessel (other than new construction) includes the following provisions:

(1) IDENTIFICATION OF HAZARDOUS WASTES.—A provision in which the Navy identifies the types and amounts of hazardous wastes that are required to be removed by the contractor from the vessel, or that are expected to be generated, during the performance of work under the contract, with such identification by the Navy to be in a form sufficient to enable the contractor to comply with Federal and State laws and regulations on the removal, handling, storage, transportation, or disposal of hazardous waste.

(2) COMPENSATION.—A provision specifying that the contractor shall be compensated under the contract for work performed by the contractor for duties of the contractor specified under paragraph (3).

(3) STATEMENT OF WORK.—A provision specifying the responsibilities of the Navy and of the contractor, respectively, for the removal (including the handling, storage, transportation, and disposal) of hazardous wastes.

(4) ACCOUNTABILITY FOR HAZARDOUS WASTES.—(A) A provision specifying the following:

(i) In any case in which the Navy is the sole generator of hazardous waste that is removed, handled, stored, transported, or disposed of by the contractor in the performance of the contract, all contracts, manifests, invoices, and other documents related to the removal, handling, storage, transportation, or disposal of such hazardous waste shall bear a generator identification number issued to the Navy pursuant to applicable law.

(ii) In any case in which the contractor is the sole generator of hazardous waste that is removed, handled, stored, transported, or disposed of by the contractor in the performance of the contract, all contracts, manifests, invoices, and other documents related to the removal, handling, storage, transportation, or disposal of such hazardous waste shall bear a generator identification number issued to the contractor pursuant to applicable law.

(iii) In any case in which both the Navy and the contractor are generators of hazardous waste that is removed, handled, stored, transported, or disposed of by the contractor in the performance of the contract, all contracts, manifests, invoices, and other documents related to the re-

moval, handling, storage, transportation, or disposal of such hazardous waste shall bear both a generator identification number issued to the Navy and a generator identification number issued to the contractor pursuant to applicable law.

(B) A determination under this paragraph of whether the Navy is a generator, a contractor is a generator, or both the Navy and a contractor are generators, shall be made in the same manner provided under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) and regulations promulgated under that subtitle.

(b) RENEGOTIATION OF CONTRACT.—The Secretary of the Navy shall renegotiate a contract described in subsection (a) if—

(1) the contractor, during the performance of work under the contract, discovers hazardous wastes different in type or amount from those identified in the contract; and

(2) those hazardous wastes originated on, or resulted from material furnished by the Government for, the naval vessel on which the work is being performed.

(c) REMOVAL OF WASTES.—The Secretary of the Navy shall remove known hazardous wastes from a vessel before the vessel's arrival at a contractor's facility for performance of a contract, to the extent such removal is feasible.

(d) RELATIONSHIP TO SOLID WASTE DISPOSAL ACT.—Nothing in this section shall be construed as altering or otherwise affecting those provisions of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) that relate to generators of hazardous waste. For purposes of this section, any term used in this section for which a definition is provided by the Solid Waste Disposal Act (or regulations promulgated pursuant to such Act) has the meaning provided by that Act or regulations.

(Added P.L. 99–661, § 1202(a), Nov. 14, 1986, 100 Stat. 3967; amended in entirety P.L. 101–189, § 1611(a), Nov. 29, 1989, 103 Stat. 1599.)

[§ 7312. Repealed. P.L. 103–355, § 2001(j)(1), Oct. 13, 1994, 108 Stat. 3303]

§ 7313. Ship overhaul work: availability of appropriations for unusual cost overruns and for changes in scope of work

(a) UNUSUAL COST OVERRUNS.—(1) Appropriations available to the Department of Defense for a fiscal year may be used for payment of unusual cost overruns incident to ship overhaul, maintenance, and repair for a vessel inducted into an industrial-fund activity or contracted for during a prior fiscal year.

(2) The Secretary of Defense shall notify Congress promptly before an obligation is incurred for any payment under paragraph (1).

(b) CHANGES IN SCOPE OF WORK.—An appropriation available to the Department of Defense for a fiscal year may be used after the otherwise-applicable expiration of the availability for obligation of that appropriation—

(1) for payments to an industrial-fund activity for amounts required because of changes in the scope of work for ship over-

haul, maintenance, and repair, in the case of work inducted into the industrial-fund activity during the fiscal year; and

(2) for payments under a contract for amounts required because of changes in the scope of work, in the case of a contract entered into during the fiscal year for ship overhaul, maintenance, and repair.

(Added P.L. 100–370, § 1(n)(1), July 19, 1988, 102 Stat. 850.)

§ 7314. Overhaul of naval vessels: competition between public and private shipyards

The Secretary of the Navy should ensure, in any case in which the Secretary awards a project for repair, alteration, overhaul, or conversion of a naval vessel following competition between public and private shipyards, that each of the following criteria is met:

(1) The bid of any public shipyard for the award includes—

(A) the full costs to the United States associated with future retirement benefits of civilian employees of that shipyard consistent with computation methodology established by Office of Management and Budget Circular A–76; and

(B) in a case in which equal access to the Navy supply system is not allowed to public and private shipyards, a pro rata share of the costs of the Navy supply system.

(2) Costs applicable to oversight of the contract by the appropriate Navy supervisor of shipbuilding, conversion, and repair are added to the bid of any private shipyard for the purpose of comparability analysis.

(3) The award is made using the results of the comparability analysis.

(Added as § 7313 P.L. 100–456, § 1225, Sept. 29, 1988, 102 Stat. 2054, redesignated § 7314 P.L. 101–189, § 1622(a), Nov. 29, 1989, 103 Stat. 1604.)

§ 7315. Preservation of Navy shipbuilding capability

(a) SHIPBUILDING CAPABILITY PRESERVATION AGREEMENTS.—The Secretary of the Navy may enter into an agreement, to be known as a "shipbuilding capability preservation agreement", with a shipbuilder under which the cost reimbursement rules described in subsection (b) shall be applied to the shipbuilder under a Navy contract for the construction of a ship. Such an agreement may be entered into in any case in which the Secretary determines that the application of such cost reimbursement rules would facilitate the achievement of the policy objectives set forth in section 2501(b) of this title.

(b) COST REIMBURSEMENT RULES.—The cost reimbursement rules applicable under an agreement entered into under subsection (a) are as follows:

(1) The Secretary of the Navy shall, in determining the reimbursement due a shipbuilder for its indirect costs of performing a contract for the construction of a ship for the Navy, allow the shipbuilder to allocate indirect costs to its private sector work only to the extent of the shipbuilder's allocable indirect private sector costs, subject to paragraph (3).

(2) For purposes of paragraph (1), the allocable indirect private sector costs of a shipbuilder are those costs of the shipbuilder that are equal to the sum of the following:

(A) The incremental indirect costs attributable to such work.

(B) The amount by which the revenue attributable to such private sector work exceeds the sum of—

(i) the direct costs attributable to such private sector work; and

(ii) the incremental indirect costs attributable to such private sector work.

(3) The total amount of allocable indirect private sector costs for a contract covered by the agreement may not exceed the amount of indirect costs that a shipbuilder would have allocated to its private sector work during the period covered by the agreement in accordance with the shipbuilder's established accounting practices.

(c) AUTHORITY TO MODIFY COST REIMBURSEMENT RULES.—The cost reimbursement rules set forth in subsection (b) may be modified by the Secretary of the Navy for a particular agreement if the Secretary determines that modifications are appropriate to the particular situation to facilitate achievement of the policy set forth in section 2501(b) of this title.

(d) APPLICABILITY.—(1) An agreement entered into with a shipbuilder under subsection (a) shall apply to each of the following Navy contracts with the shipbuilder:

(A) A contract that is in effect on the date on which the agreement is entered into.

(B) A contract that is awarded during the term of the agreement.

(2) In a shipbuilding capability preservation agreement applicable to a shipbuilder, the Secretary may agree to apply the cost reimbursement rules set forth in subsection (b) to allocations of indirect costs to private sector work performed by the shipbuilder only with respect to costs that the shipbuilder incurred on or after November 18, 1997, under a contract between the shipbuilder and a private sector customer of the shipbuilder that became effective on or after January 26, 1996.

(Added P.L. 105–85, § 1027(a)(1), Nov. 18, 1997, 111 Stat. 1878; amended P.L. 106–65, § 1066(a)(29), Oct. 5, 1999, 113 Stat. 772.)

[CHAPTER 635—REPEALED]

[§§ 7341 to 7345. Repealed. P.L. 103–160, § 824(a)(9), Nov. 30, 1993, 107 Stat. 1708]

CHAPTER 637—SALVAGE FACILITIES

Sec.
7361. Authority to provide for necessary salvage facilities.
7362. Acquisition and transfer of vessels and equipment.
7363. Settlement of claims.
7364. Disposition of receipts.

§ 7361. Authority to provide for necessary salvage facilities

(a) AUTHORITY.—The Secretary of the Navy may provide, by contract or otherwise, necessary salvage facilities for public and private vessels.

(b) COORDINATION WITH SECRETARY OF TRANSPORTATION.—The Secretary shall submit to the Secretary of Transportation for comment each proposed contract for salvage facilities that affects the interests of the Department of Transportation.

(c) LIMITATION.—The Secretary of the Navy may enter into a term contract under subsection (a) only if the Secretary determines that available commercial salvage facilities are inadequate to meet the requirements of national defense.

(d) PUBLIC NOTICE.—The Secretary may not enter into a contract under subsection (a) until the Secretary has provided public notice of the intent to enter into such a contract.

(Aug. 10, 1956, ch. 1041, 70A Stat. 455; Aug. 6, 1981, P.L. 97–31, § 12(3)(D), 95 Stat. 154; amended in its entirety P.L. 104–106, § 1015, Feb. 10, 1996, 110 Stat. 424.)

§ 7362. Acquisition and transfer of vessels and equipment

(a) AUTHORITY.—The Secretary of the Navy may acquire or transfer for operation by private salvage companies such vessels and equipment as the Secretary considers necessary.

(b) AGREEMENT ON USE.—Before any salvage vessel or salvage gear is transferred by the Secretary to a private party, the private party must agree in writing with the Secretary that the vessel or gear will be used to support organized offshore salvage facilities for a period of as many years as the Secretary considers appropriate.

(c) REFERENCE TO AUTHORITY TO ADVANCE FUNDS FOR IMMEDIATE SALVAGE OPERATIONS.—For authority for the Secretary of the Navy to advance to private salvage companies such funds as the Secretary considers necessary to provide for the immediate financing of salvage operations, see section 2307(g)(2) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 455; amended in its entirety P.L. 104–106, § 1015, Feb. 10, 1996, 110 Stat. 424.)

§ 7363. Settlement of claims

The Secretary of the Navy may settle any claim by the United States for salvage services rendered by the Department of the Navy and may receive payment of any such claim.

(Aug. 10, 1956, ch. 1041, 70A Stat. 455; amended in its entirety P.L. 104–106, § 1015, Feb. 10, 1996, 110 Stat. 425.)

§ 7364. Disposition of receipts

Amounts received under this chapter shall be credited to appropriations for maintaining naval salvage facilities. However, any amount received under this chapter in any fiscal year in excess of naval salvage costs incurred by the Navy during that fiscal year shall be deposited into the general fund of the Treasury.

(Aug. 10, 1956, ch. 1041, 70A Stat. 456; amended in its entirety P.L. 104–106, § 1015, Feb. 10, 1996, 110 Stat. 425.)

CHAPTER 639—UNITED STATES NAVAL OBSERVATORY

Sec.
[7391 to 7394. Repealed.]
7395. Naval Observatory: administration.
7396. Naval Observatory: exchange of information with foreign offices.

[§§ 7391 to 7394. Repealed. P.L. 97–295, § 1(50)(A), Oct. 12, 1982, 96 Stat. 1299]

§ 7395. Naval Observatory: administration

(a) The Naval Observatory shall be attached to the Office of the Chief of Naval Operations.

(b) The Superintendent of the Naval Observatory shall be detailed from officers in the line of the Navy serving in the grade of captain or above.

(c) The Secretary of the Navy may detail any officer of the Navy, competent for that duty, to supervise the Nautical Almanac.

(Aug. 10, 1956, ch. 1041, 70A Stat. 457.)

§ 7396. Naval Observatory: exchange of information with foreign offices

(a) The Secretary of the Navy may arrange to exchange data with foreign almanac offices to reduce the duplication of work in preparing the different national nautical and astronomical almanacs and make available for publication a larger amount of data useful to navigators and astronomers. Each such arrangement shall be made terminable on one year's notice.

(b) The work of the Nautical Almanac Office shall be so conducted that in an emergency the part of the work intended for the use of navigators may be computed by the force of the office without foreign cooperation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 457; Sept. 8, 1978, P.L. 95–357, 92 Stat. 591.)

CHAPTER 641—NAVAL PETROLEUM RESERVES

Sec.
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§ 7420. Definitions

In this chapter:

(1) The term "national defense" includes the needs of, and the planning and preparedness to meet, essential defense, industrial, and military emergency energy requirements relative to the national safety, welfare, and economy, particularly resulting from foreign military or economic actions.

(2) The term "naval petroleum reserves" means the naval petroleum and oil shale reserves established by this chapter, including Naval Petroleum Reserve Numbered 1 (Elk Hills), located in Kern County, California, established by Executive order of the President, dated September 2, 1912; Naval Petroleum Reserve Numbered 2 (Buena Vista), located in Kern County, California, established by Executive order of the President, dated December 13, 1912; Naval Petroleum Reserve Numbered 3 (Teapot Dome), located in Wyoming, established by Executive order of the President, dated April 30, 1915; Oil Shale Reserve Numbered 1, located in Colorado, established by Executive order of the President, dated December 6, 1916, as amended by Executive order dated June 12, 1919; Oil Shale Reserve Numbered 2, located in Utah, established by Executive order of the President, dated December 6, 1916; and Oil Shale Reserve Numbered 3, located in Colorado, established by Executive order of the President, dated September 27, 1924.

(3) The term "petroleum" includes crude oil, gases (including natural gas), natural gasoline, and other related hydrocarbons, oil shale, and the products of any of such resources.

(4) The term "Secretary" means the Secretary of Energy.

(5) The term "small refiner" means an owner of a refinery or refineries (including refineries not in operation) who qualifies as a small business refiner under the rules and regulations of the Small Business Administration.

(6) The term "maximum efficient rate" means the maximum sustainable daily oil or gas rate from a reservoir which will permit economic development and depletion of that reservoir without detriment to the ultimate recovery.

(Added P.L. 94–258, § 201(1), Apr. 5, 1976, 90 Stat. 307; amended P.L. 96–513, § 513(30), Dec. 12, 1980, 94 Stat. 2933; P.L. 100–26, § 7(k)(5), April 21, 1987, 101 Stat. 284.)

§ 7421. Jurisdiction and control

(a) The Secretary shall take possession of all properties inside the naval petroleum reserves that are or may become subject to the control of and use by the United States for national defense purposes, except as otherwise provided in this chapter.

(b) The Secretary has exclusive jurisdiction and control over those lands inside Naval Petroleum Reserves Numbered 1 and 2 that are covered by leases granted under sections 181–184, 185–188, 189–194, 201, 202–209, 211–214, 223, 224–226, 226d, 226e, 227–229a, 241, 251, and 261–263 of title 30, and shall administer those leases.

(Aug. 10, 1956, ch. 1041, 70A Stat. 457; Oct. 11, 1962, P.L. 87–796, § 1(1), 76 Stat. 904; Apr. 5, 1976, P.L. 94–258, § 201(2), 90 Stat. 307; Oct. 19, 1984, P.L. 98–525, § 1405(50), 98 Stat. 2625.)

§ 7422. Administration

(a) The Secretary, directly or by contract, lease, or otherwise, shall explore, prospect, conserve, develop, use, and operate the naval petroleum reserves in his discretion, subject to the provisions of subsection (c) and the other provisions of this chapter; except that no petroleum leases shall be granted at Naval Petroleum Reserves Numbered 1 and 3.

(b) Except as otherwise provided in this chapter, particularly subsection (c), the naval petroleum reserves shall be used and operated for—

(1) the protection, conservation, maintenance, and testing of those reserves; or

(2) the production of petroleum whenever and to the extent that the Secretary, with the approval of the President, finds that such production is needed for national defense purposes and the production is authorized by a joint resolution of Congress.

(c)(1) In administering Naval Petroleum Reserves Numbered 1, 2, and 3, the Secretary is authorized and directed—

(A) to further explore, develop, and operate such reserves;

(B) to produce, during any extension of a period under paragraph (2), such reserves—

(i) at the maximum efficient rate consistent with sound engineering practices; or

(ii) at a lesser rate consistent with sound engineering practices and the protection, conservation, maintenance, and testing of such reserves if the Secretary determines that the minimum price described in section 7430(b)(2) of

this title cannot be attained for the United States share of petroleum (other then natural gas liquids) produced from such Reserves;

(C) during such production period or any extension thereof to sell or otherwise dispose of the United States share of such petroleum produced from such reserves as provided in section 7430 of this title; and

(D) to construct, acquire, or contract for the use of storage and shipping facilities on and off the reserves and pipelines and associated facilities on and off the reserves for transporting petroleum from such reserves to the points where the production from such reserves will be refined or shipped.

Any pipeline in the vicinity of a naval petroleum reserve not otherwise operated as a common carrier may be acquired by the Secretary by condemnation, if necessary, if the owner thereof refuses to accept, convey, and transport without discrimination and at reasonable rates any petroleum produced at such reserve. With the approval of the Secretary, rights-of-way for new pipelines and associated facilities may be acquired by the exercise of the right of eminent domain in the appropriate United States district court. Such rights-of-way may be acquired in the manner set forth in the Act of February 26, 1931 (40 U.S.C. 258a–258e), and the prospective holder of the right-of-way is "the authority empowered by law to acquire the lands" within the meaning of that Act. Such new pipelines shall accept, convey, and transport without discrimination and at reasonable rates any petroleum produced at such reserves as a common carrier.

(2)[1] After April 5, 1982, the President may extend the period of production in the case of any naval petroleum reserve for additional periods of not to exceed three years each—

(A) after the President requires an investigation to be made, in the case of each extension, to determine the necessity for continued production from such naval petroleum reserve;

(B) after the President submits to the Congress, at least 180 days before the expiration of the current production period prescribed by this section, or any extension thereof, a copy of the report made to him on such investigation together with a certification by him that continued production from such naval petroleum reserve is in the national interest; and

(C) if neither House of Congress within ninety days after receipt of such report and certification adopts a resolution disapproving further production from such naval petroleum reserve.

(Aug. 10, 1956, ch. 1041, 70A Stat. 458; Aug. 24, 1962, P.L. 87–599, § 1, 76 Stat. 401; Oct. 11, 1962, P.L. 87–796, § 1(2), 76 Stat. 904; Apr. 5, 1976, P.L. 94–258, § 201(3), 90 Stat. 307; Dec. 12, 1979, P.L. 96–137, § 3(a), 93 Stat. 1061; Dec. 12, 1980, P.L. 96–513, § 513(31), 94 Stat. 2933; Oct. 19, 1984, P.L. 98–525, § 1405(51), 98 Stat. 2625; Aug. 29, 1986, P.L. 99–413, § 1(a), 100 Stat. 944; Dec. 22, 1987, P.L. 100–202, § 101(g) [title II], 101 Stat. 1329–242; Nov. 29, 1989, P.L. 101–189, § 1622(f)(2), 103 Stat. 1605.)

[1] By a message to Congress dated October 8, 1999, the President notified Congress that he had extended the period of production of the naval petroleum reserves for a period of 3 years from April 5, 2000, the expiration date of the previously authorized extension of the period of production, and certified that continued production from the naval petroleum reserves is in the national interest. See House Document 106–142.

§ 7423. Periodic re-examination of production requirements

The Secretary shall from time to time reexamine the need for the production of petroleum from oil shale for national defense when that production is authorized under section 7422 of this title. If he finds that the authorized quantity is no longer needed, he shall reduce production to the amount currently needed for national defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 458; Oct. 11, 1962, P.L. 87–796, § 1(3), 76 Stat. 904; Apr. 5, 1976, P.L. 94–258, § 201(4), 90 Stat. 309.)

§ 7424. Protection of oil reserves; contracts for conservation

(a) To consolidate and protect the oil lands owned by the United States, the Secretary may—

(1) contract with owners and lessees of land inside or adjoining naval petroleum reserves for—

(A) conservation of oil and gas; and

(B) compensation for estimated drainage in lieu of drilling or operating offset wells; and

(2) acquire privately owned lands or leases inside Naval Petroleum Reserve Numbered 1 by exchange of—

(A) lands of the United States inside Naval Petroleum Reserve Numbered 1;

(B) the right to royalty production from any of the naval petroleum reserves; and

(C) the right to any money due the United States as a result of the wrongful extraction of petroleum products from lands inside Naval Petroleum Reserve Numbered 1.

(b) The Secretary shall report annually to Congress all agreements under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 458; Oct. 11, 1962, P.L. 87–796, § 1(4), 76 Stat. 904; Apr. 5, 1976, P.L. 94–258, § 201(5), 90 Stat. 309; Dec. 12, 1980, P.L. 96–513, § 513(32)(A), 94 Stat. 2933.)

§ 7425. Acquisition by condemnation and purchase

(a) Whenever the Secretary is unable to make arrangements he considers satisfactory for exchanges of land or agreements for conservation authorized by section 7424 of this title, the Secretary may acquire, with the approval of the President, such privately owned lands and leases—

(1) by purchase, inside the naval petroleum reserves, or outside those reserves on the same geologic structure; and

(2) by condemnation, inside Naval Petroleum Reserve Numbered 1, or, if there is substantial drainage, outside that reserve on the same geologic structure.

(b) The Secretary shall report annually to Congress all proceedings for purchase and condemnation under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 458; Apr. 5, 1976, P.L. 94–258, § 201(6), 90 Stat. 309; Dec. 12, 1980, P.L. 96–513, § 513(32)(A), 94 Stat. 2933; Oct. 30, 2000, P.L. 106–398, § 1[3402(b)(1)], 114 Stat. 1654, 1654A–484.)

[§ 7426. Repealed. P.L. 106–398, § 1[3402(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–484] [2]

§ 7427. Cooperative or unit plans in the naval petroleum reserves

The Secretary, with the consent of the President,[3] may make agreements, with respect to lands inside the naval petroleum reserves, of the same type as the Secretary of the Interior may make under section 17(m) of the Act of February 25, 1920 (30 U.S.C. 226(m)). No such agreement made by the Secretary may extend the term of any lease unless the agreement so provides.

(Aug. 10, 1956, ch. 1041, 70A Stat. 460; Apr. 5, 1976, P.L. 94–258, § 201(8), 90 Stat. 309; Dec. 12, 1980, P.L. 96–513, § 513(33), 94 Stat. 2934; Sept. 29, 1988, P.L. 100–456, § 1233(g)(3), 102 Stat. 2058; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 7428. Agreements and leases: provision for change

Every unit or cooperative plan of development and operation and every lease affecting lands owned by the United States within Naval Petroleum Reserve Numbered 2 and the oil shale reserves shall contain a provision authorizing the Secretary, subject to approval by the President [4] and to any limitation in the plan or lease, to change from time to time the rate of prospecting and development on, and the quantity and rate of production from, lands of the United States under the plan or lease, notwithstanding any other provision of law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 460; Oct. 11, 1962, P.L. 87–796, § 1(5), 76 Stat. 905; Apr. 5, 1976, P.L. 94–258, § 201(9), 90 Stat. 309; Oct. 30, 2000, P.L. 106–398, § 1[3402(b)(2)], 114 Stat. 1654, 1654A–484.)

§ 7429. Re-lease of certain lands: lessee's preferential right

The Secretary, on terms prescribed by him, may re-lease lands in the naval petroleum reserves that were covered by leases made before July 1, 1936, and terminated by law at the expiration of their initial twenty-year periods. If any such land is to be re-leased, the Secretary shall give to the former lessee preferential rights to the new lease.

(Aug. 10, 1956, ch. 1041, 70A Stat. 460; Apr. 5, 1976, P.L. 94–258, § 201(10), 90 Stat. 309.)

§ 7430. Disposition of products

(a) In administering the naval petroleum reserves under this chapter, the Secretary shall use, store, or sell the petroleum produced from the naval petroleum reserves and lands covered by joint, unit, or other cooperative plans.

(b)(1) Subject to paragraph (2) and notwithstanding any other provision of law, each sale of the United States share of petroleum shall be made by the Secretary at public sale to the highest qualified bidder, at such time, in such amounts, and after such advertising as the Secretary considers proper and without regard to Fed-

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[2] Section 3402(c) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (P.L. 106–398; 114 Stat. 1654–484) provides:

(c) SAVINGS PROVISION.—The repeal of section 7426 of title 10, United States Code, shall not affect the validity of contracts that are in effect under such section on the day before [Oct. 30, 2000]. No such contract may be extended or renewed on or after [Oct. 30, 2000].

[3] By Executive Order 12929 (Sept. 29, 1994; 59 Fed. Reg. 50473), the functions vested in the President by sections 7427 and 7428 were delegated to the Secretary of Energy.

[4] See footnote 3 under section 7427 above.

eral, State, or local regulations controlling sales or allocation of petroleum products. Each sale of the United States share of petroleum shall be for periods of not more than one year, except that a sale of natural gas may be made for a period of more than one year.

(2) The Secretary may not sell any part of the United States share of petroleum produced from Naval Petroleum Reserves Numbered 2 and 3 at a price less than the higher of—

(A) the current sales price, as estimated by the Secretary, of comparable petroleum in the same area; or

(B) the price of petroleum being purchased for the Strategic Petroleum Reserve, minus the cost of transporting petroleum from the naval petroleum reserve concerned to the nearest storage area of the Strategic Petroleum Reserve, with adjustments for the difference in the quality of the petroleum being purchased for the Strategic Petroleum Reserve and petroleum being produced from the naval petroleum reserve concerned.[5]

(3) For purposes of paragraph (2), the term "petroleum" does not include natural gas liquids.

(c) In no event shall the Secretary permit the award of any contract which would result in any person obtaining control, directly or indirectly, over more than 20 percent of the estimated annual United States share of petroleum produced from Naval Petroleum Reserve Numbered 1.

(d) Each proposal for sale under this title shall provide that the terms of every sale of the United States share of petroleum from the naval petroleum reserves shall be so structured as to give full and equal opportunity for the acquisition of petroleum by all interested persons, including major and independent oil producers and refiners alike. When the Secretary, in consultation with the Secretary of the Interior, determines that the public interests will be served by the sale of petroleum to small refiners not having their own adequate sources of supply of petroleum, the Secretary is authorized and directed to set aside a portion of the United States share of petroleum produced for sale to such refiners under the provisions of this section for processing or use in such refineries, except that—

(1) none of the production sold to small refiners may be resold in kind;

(2) production must be sold at a cost of not less than the prevailing local market price of comparable petroleum;

(3) the set-aside portion may not exceed 25 percent of the estimated annual United States share of the total production from all producing naval petroleum reserves; and

(4) notwithstanding the provisions of subsection (b), the Secretary may, at his discretion if he deems it to be in the public interest, prorate such petroleum among such refiners for sale, without competition, at not less than the prevailing local market price of comparable petroleum.

[5] The requirements of subparagraph (B) of subsection (b)(2) do not apply to fiscal year 2001 and any fiscal year thereafter pursuant to the first proviso under the heading "NAVAL PETROLEUM AND OIL SHALE RESERVES" in title II of the Department of the Interior and Related Agencies Appropriations Act, 2001 (P.L. 106–291; 114 Stat. 976).

(e) Any petroleum produced from the naval petroleum reserves, except such petroleum which is either exchanged in similar quantities for convenience or increased efficiency or transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.) and, in addition, before any petroleum subject to this section may be exported under the limitations and licensing requirement and penalty and enforcement provisions of the Export Administration Act of 1979, the President must make and publish an express finding that such exports will not diminish the total quality or quantity of petroleum available to the United States and that such exports are in the national interest and are in accord with the Export Administration Act of 1979.

(f) During the period of production or any extension thereof authorized by section 7422(c) of this title, the consultation and approval requirements of section 7431(a)(3) of this title are waived.

(g)(1) Prior to the promulgation of any rules and regulations, plans of development and amendments thereto, and in the entering and making of contracts and operating agreements relating to the development, production, or sale of petroleum in or from the reserves, the Secretary shall consult with and give due consideration to the views of the Attorney General of the United States with respect to matters which may affect competition.

(2) No contract or operating agreement may be made, issued, or executed under this chapter until at least 15 days after the Secretary notifies the Attorney General of the proposed contract or operating agreement. Such notification shall contain such information as the Attorney General may require in order to advise the Secretary as to whether such contract or operating agreement may create or maintain a situation inconsistent with the antitrust laws. If, within such 15-day period, the Attorney General advises the Secretary that a contract or operating agreement may create or maintain a situation inconsistent with the antitrust laws, then the Secretary may not make, issue, or execute that contract or operating agreement.

(h) Nothing in this chapter shall be deemed to confer on any person immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.

(i) In this section, the term "antitrust laws" means—

(1) the Sherman Act (15 U.S.C. 1 et seq.);

(2) the Clayton Act (15 U.S.C. 12 et seq.);

(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);

(4) sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9); and

(5) sections 2, 3, and 4 of the Act of June 19, 1936 (commonly referred to as the "Robinson-Patman Act") (15 U.S.C. 13a, 13b, and 21a).

(j) Any pipeline which accepts, conveys, or transports any petroleum produced from Naval Petroleum Reserves Numbered 1 or Numbered 3 shall accept, convey, and transport without dis-

crimination and at reasonable rates any such petroleum as a common carrier insofar as petroleum from such reserves is concerned. Every contract entered into by the Secretary for the sale of any petroleum owned by the United States which is produced from such reserves shall contain provisions implementing the requirements of the preceding sentence if the contractor owns a controlling interest in any pipeline or any company operating any pipeline, or is the operator of any pipeline, which carries any petroleum produced from such naval petroleum reserves. The Secretary may promulgate rules and regulations for the purpose of carrying out the provisions of this section and he, or the Secretary of the Interior where the authority extends to him, may declare forfeit any contract, operating agreement, right-of-way, permit, or easement held by any person violating any such rule or regulation. This section shall not apply to any natural gas common carrier pipeline operated by any person subject to regulation under the Natural Gas Act (15 U.S.C. 717 et seq.) or any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality.

(k)(1) With respect to all or any part of the United States share of petroleum produced from the naval petroleum reserves, the President may direct that the Secretary—

(A) place that petroleum in the Strategic Petroleum Reserve as authorized by sections 151 through 166 of the Energy Policy and Conservation Act (42 U.S.C. 6231–6246); or

(B) exchange, directly or indirectly, that petroleum for other petroleum to be placed in the Strategic Petroleum Reserve under such terms and conditions and by such methods as the Secretary determines to be appropriate, without regard to otherwise applicable Federal procurement statutes and regulations.

(2) The requirements of section 159 of the Energy Policy and Conservation Act (42 U.S.C. 6239) do not apply to actions taken under this subsection.

(*l*)(1) Notwithstanding any other provision of this chapter (but subject to paragraph (2)), during any period in which the production of petroleum is authorized from Naval Petroleum Reserves Numbered 1, 2, or 3, the Secretary, at the request of the Secretary of Defense, may provide any portion of the United States share of petroleum so produced to the Department of Defense for its use, exchange, or sale in order to meet petroleum product requirements of the Department of Defense.

(2) Petroleum may be provided to the Department of Defense under paragraph (1) either directly or by such exchange as the Secretary deems appropriate. Appropriate reimbursement reasonably reflecting the fair market value shall be provided by the Secretary of Defense for petroleum provided under this subsection.

(3) Any exchange made pursuant to this subsection may be made without regard to otherwise applicable Federal procurement statutes and regulations.

(4) Paragraph (1) does not apply to any petroleum set aside for small refiners under subsection (d) or placed in the Strategic Petroleum Reserve under subsection (k).

(Aug. 10, 1956, ch. 1041, 70A Stat. 460; Aug. 24, 1962, P.L. 87–599, § 2, 76 Stat. 401; Oct. 11, 1962, P.L. 87–796, § 1(6), 76 Stat. 905; Apr. 5, 1976, P.L. 94–258, § 201(11), 90 Stat. 309; June 30, 1980, P.L. 96–294, § 804, 94 Stat. 777; Dec. 12, 1980, P.L. 96–513, § 513(34), 94 Stat. 2934; July 10, 1981, P.L. 97–22, § 11(a)(10), 95 Stat. 138; Oct. 19, 1984, P.L. 98–525, § 1405(53), 98 Stat. 2625; Aug. 29, 1986, P.L. 99–413, § 1(b), (c), 100 Stat. 944; April 21, 1987, P.L. 100–26, § 7(k)(9), 101 Stat. 284; Dec. 22, 1987, P.L. 100–202, § 101(g) [title II], 101 Stat. 1329–242; Sept. 29, 1988, P.L. 100–456, § 1233(e)(2), 102 Stat. 2057; Oct. 30, 2000, P.L. 106–398, § 1[3401], 114 Stat. 1654, 1654A–484.)

§ 7431. Requirements as to consultation and approval

(a) The Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives must be consulted and the President's approval must be obtained before any condemnation proceedings may be started under this chapter and before any of the following transactions authorized by this chapter may be effective:

(1) A lease of any part of the naval petroleum reserves.

(2) A contract to alienate from the United States the use, control, or possession of any part of the naval petroleum reserves (except that consultation and Presidential approval are not required in connection with the issuance of permits, licenses, easements, grazing and agricultural leases, rights-of-way, and similar contracts pertaining to use of the surface area of the naval petroleum reserves).

(3) A contract to sell the petroleum (other than royalty oil and gas) produced from any part of the naval petroleum reserves.

(4) A contract for conservation or for compensation for estimated drainage.

(5) An agreement to exchange land, the right to royalty production, or the right to any money due the United States.

(b)(1) During the period of production authorized by section 7422(c) of this title, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives any new plans or substantial amendments to ongoing plans for the exploration, development, and production of the naval petroleum reserves.

(2) All plans or substantial amendments submitted to the Congress pursuant to this section shall contain a report by the Attorney General of the United States with respect to the anticipated effects of such plans or amendments on competition. Such plans or amendments shall not be implemented until sixty days after such plans or amendments have been submitted to such committees.

(c) During the period of production authorized by section 7422(c) of this title, the Secretary shall submit annual reports as of the first day of the fiscal year to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, and such committees shall cause such reports to be printed as a Senate or House document, as appropriate. The Secretary shall include in such reports, with respect to each naval petroleum reserve, an explanation in detail of the following:

(1) The status of the exploration, development, and production programs.

(2) The production that has been achieved, including the disposition of such production and the proceeds realized therefrom.

(3) The status of pipeline construction and procurement and problems related to the availability of transportation facilities.

(4) A summary of future plans for exploration, development, production, disposal, and transportation of the production from the naval petroleum reserves.

(5) Such other information regarding the reserve as the Secretary deems appropriate.

(Aug. 10, 1956, ch. 1041, 70A Stat. 460; Oct. 11, 1962, P.L. 87–796, § 1(7), 76 Stat. 905; Apr. 5, 1976, P.L. 94–258, § 201(12), 90 Stat. 311; Oct. 19, 1984, P.L. 98–525, § 1405(52), 98 Stat. 2625; Nov. 8, 1985, P.L. 99–145, § 1303(25), 99 Stat. 740; Feb. 10, 1996, P.L. 104–106, § 1502(a)(2), 110 Stat. 502.; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 7432. Authorizations of appropriations

(a) Funds for the following purposes may not be appropriated unless such appropriations have been specifically authorized by law:

(1) Exploration, prospecting, conservation, development, use, operations, and production of the naval petroleum reserves as authorized by this chapter.

(2) Production (including preparation for production) as authorized by this chapter or as may be authorized after April 5, 1976.

(3) The construction and operation of facilities both within and outside the naval petroleum reserves incident to the production and the delivery of petroleum, including pipelines and shipping terminals.

Sums appropriated for such purposes shall remain available until expended.

(b) Contracts under this chapter providing for the obligation of funds may be entered into for a period of five years, renewable for an additional five-year period; however, such contracts may obligate funds only to the extent that such funds are made available in appropriation Acts.

(Aug. 10, 1956, ch. 1041, 70A Stat. 461; Oct. 11, 1962, P.L. 87–796, § 1(8), 76 Stat. 905; Apr. 5, 1976, P.L. 94–258, § 201(13), 90 Stat. 312; Dec. 12, 1979, P.L. 96–137, § 3(b)(1), 93 Stat. 1061; Dec. 12, 1980, P.L. 96–513, § 513(35), 94 Stat. 2934.)

§ 7433. Disposition of royalties

(a) Any oil, gas, gasoline or other substance accruing to the United States as royalty from any lease under this chapter shall be delivered to the United States, or shall be paid for in money, as the Secretary elects.

(b) All money accruing to the United States from lands in the naval petroleum reserves shall be covered into the Treasury.

(Aug. 10, 1956, ch. 1041, 70A Stat. 461; Oct. 11, 1962, P.L. 87–796, § 1(9), 76 Stat. 905; Apr. 5, 1976, P.L. 94–258, § 201(14), (15), 90 Stat. 313.)

[§ 7434. Repealed. P.L. 104–66, § 1051(g), Dec. 21, 1995, 109 Stat. 716]

§ 7435. Foreign interest

(a) If the laws, customs, or regulations of any foreign country deny the privilege of leasing public lands to citizens or corporations of the United States, citizens of that foreign country, or corporations controlled by citizens of that country, may not, by contract made after July 1, 1937, or by stock ownership, holding, or control, acquire or own any interest in, or right to any benefit from, any lease of land in the naval petroleum, naval oil shale, or other naval fuel reserves made under sections 181–184, 185–188, 189–194, 201, 202–209, 211–214, 223, 224–226, 226d, 226e, 227–229a, 241, 251, and 261–263 of title 30, or under this chapter.

(b) The Secretary may cancel any lease for any violation of this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 461; Oct. 11, 1962, P.L. 87–796, § 1(11), 76 Stat. 906; Apr. 5, 1976, P.L. 94–258, § 201(17), 90 Stat. 313.)

§ 7436. Regulations

(a) The Secretary may prescribe regulations and take any proper action to accomplish the purposes of this chapter.

(b) All statements, reports, and representations required by the regulations shall be under oath, unless otherwise specified, and in such form as the Secretary requires.

(Aug. 10, 1956, ch. 1041, 70A Stat. 461; Apr. 5, 1976, P.L. 94–258, § 201(18), 90 Stat. 313.)

§ 7437. Violations by lessee

(a) If a lessee fails to comply with any provision of this chapter, of his lease, or of regulations issued under section 7436 of this title that are in force on the date of his lease, the lease may be forfeited and cancelled by an appropriate proceeding in the United States district court for the district in which any part of the property is located.

(b) The lease may provide appropriate methods for the settlement of disputes and remedies for breach of specified conditions.

(Aug. 10, 1956, ch. 1041, 70A Stat. 461.)

§ 7438. Rifle, Colorado, plant; possession, use, and transfer of

(a) The Secretary shall take possession of the experimental demonstration facility near Rifle, Colorado, which was constructed and operated by the Department of the Interior on lands on or near the naval oil shale reserves under the Act of April 5, 1944 (30 U.S.C. 321 et seq.).

(b) The Secretary, subject to the approval of the President, shall by contract, lease, or otherwise encourage the use of the facility described in subsection (a) in research, development, test, evaluation, and demonstration work. For such purposes the Secretary may use or lease for use by institutions, organizations, or individuals, public or private, the facility described in subsection (a) and may construct, install, and operate, or lease for operation additional experimental facilities on such lands. The Secretary may, after consultation with the Committee on Armed Services of the

Senate and the Committee on Armed Services of the House of Representatives, mine and remove, or authorize the mining and removal, of any oil shale or products therefrom from lands in the naval oil shale reserves that may be needed for such experimentation.

(c) Nothing in this chapter shall be construed—

(1) to authorize the commercial development and operation of the naval oil shale reserves by the Government in competition with private industry; or

(2) in diminution of the responsibility of the Secretary in providing oil shale and products therefrom for needs of national defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 462; Oct. 11, 1962, P.L. 87–796, § 1(12), 76 Stat. 906; Apr. 5, 1976, P.L. 94–258, § 201(19), 90 Stat. 313; Dec. 12, 1980, P.L. 96–513, § 513(37), 94 Stat. 2934; Feb. 10, 1996, P.L. 104–106, § 1502(a)(2), 110 Stat. 502; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 7439. Certain oil shale reserves: transfer of jurisdiction and petroleum exploration, development, and production

(a) TRANSFER REQUIRED.—(1) Upon the enactment of this section, the Secretary of Energy shall transfer to the Secretary of the Interior administrative jurisdiction over all public domain lands included within Oil Shale Reserve Numbered 1 and those public domain lands included within the undeveloped tracts of Oil Shale Reserve Numbered 3.

(2) Not later than one year after the date of the enactment of this section, the Secretary of Energy shall transfer to the Secretary of the Interior administrative jurisdiction over those public domain lands included within the developed tract of Oil Shale Reserve Numbered 3, which consists of approximately 6,000 acres and 24 natural gas wells, together with pipelines and associated facilities.

(3) Notwithstanding the transfer of jurisdiction, the Secretary of Energy shall continue to be responsible for all environmental restoration, waste management, and environmental compliance activities that are required under Federal and State laws with respect to conditions existing on the lands at the time of the transfer.

(4) Upon the transfer to the Secretary of the Interior of jurisdiction over public domain lands under this subsection, the other provisions of this chapter shall cease to apply with respect to the transferred lands.

(b) AUTHORITY TO LEASE.—(1) Beginning on the date of the enactment of this section, or as soon thereafter as practicable, the Secretary of the Interior shall enter into leases with one or more private entities for the purpose of exploration for, and development and production of, petroleum (other than in the form of oil shale) located on or in public domain lands in Oil Shale Reserves Numbered 1 and 3 (including the developed tract of Oil Shale Reserve Numbered 3). Any such lease shall be made in accordance with the requirements of the Mineral Leasing Act (30 U.S.C. 181 et seq.) regarding the lease of oil and gas lands and shall be subject to valid existing rights.

(2) Notwithstanding the delayed transfer of the developed tract of Oil Shale Reserve Numbered 3 under subsection (a)(2), the Secretary of the Interior shall enter into a lease under paragraph (1)

with respect to the developed tract before the end of the one-year period beginning on the date of the enactment of this section.

(c) MANAGEMENT.—The Secretary of the Interior, acting through the Director of the Bureau of Land Management, shall manage the lands transferred under subsection (a) in accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and other laws applicable to the public lands.

(d) TRANSFER OF EXISTING EQUIPMENT.—The lease of lands by the Secretary of the Interior under this section may include the transfer, at fair market value, of any well, gathering line, or related equipment owned by the United States on the lands transferred under subsection (a) and suitable for use in the exploration, development, or production of petroleum on the lands.

(e) COST MINIMIZATION.—The cost of any environmental assessment required pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) in connection with a proposed lease under this section shall be paid out of unobligated amounts available for administrative expenses of the Bureau of Land Management.

(f) TREATMENT OF RECEIPTS.—(1) Notwithstanding section 35 of the Mineral Leasing Act (30 U.S.C. 191), all moneys received during the period specified in paragraph (2) from a lease under this section (including moneys in the form of sales, bonuses, royalties (including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.)), and rentals) shall be covered into the Treasury of the United States and shall not be subject to distribution to the States pursuant to subsection (a) of such section 35. Subject to a specific authorization and appropriation for this purpose, such moneys may be used for reimbursement of environmental restoration, waste management, and environmental compliance costs incurred by the United States with respect to the lands transferred under subsection (a).

(2) The period referred to in this subsection is the period beginning on the date of the enactment of this section and ending on the date on which the Secretary of Energy and the Secretary of the Interior jointly certify to Congress that the sum of the moneys deposited in the Treasury under paragraph (1) is equal to the total of the following:

(A) The cost of all environmental restoration, waste management, and environmental compliance activities incurred by the United States with respect to the lands transferred under subsection (a).

(B) The cost to the United States to originally install wells, gathering lines, and related equipment on the transferred lands and any other cost incurred by the United States with respect to the lands.

(Added P.L. 105–85, § 3404(a), Nov. 18, 1997, 111 Stat. 2059.)

CHAPTER 643—CIVILIAN EMPLOYEES

Sec.
[7471. Repealed.]
7472. Physical examination: employees engaged in hazardous occupations.
7473. Employment of aliens.
[7474, 7475. Repealed.]
7476. Administration of oaths by clerks and employees.
7477. Transportation of dependents and household effects of civilian personnel stationed outside the United States: payment in lieu of transportation.
7478. Naval War College and Marine Corps University: civilian faculty members.
7479. Civil service mariners of Military Sealift Command: release of drug test results to Coast Guard.
7480. Special agents of the Naval Criminal Investigative Service: authority to execute warrants and make arrests.

[§ 7471. Repealed. P.L. 85–861, § 36B(23), Sept. 2, 1958, 72 Stat. 1571]

§ 7472. Physical examination: employees engaged in hazardous occupations

(a) The Secretary of the Navy may provide for physical examination by civilians of employees engaged in hazardous occupations, where the professional services of the Medical Department are not available. The Secretary may compensate these civilians for their services, on a contract or fee basis, at the rates customary in the locality.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 462.)

§ 7473. Employment of aliens

Laws prohibiting payment of compensation to a person who is not a citizen of the United States do not apply to a person whose employment by the Department of the Navy is determined by the Secretary of the Navy to be necessary to obtain for the armed forces the benefits of the special technical or scientific knowledge or experience possessed by that person and not readily obtainable from a citizen.

(Aug. 10, 1956, ch. 1041, 70A Stat. 462.)

[§ 7474. Repealed. P.L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 663]

[§ 7475. Repealed. P.L. 86–148, § 1(1), Aug. 7, 1959, 73 Stat. 302]

§ 7476. Administration of oaths by clerks and employees

(a) Chief clerks and inspectors attached to any office of inspector of naval material, chief clerks attached to the field service of the Department of the Navy, to naval shipyards and stations, and to Marine Corps posts and stations, and such other clerks and employees attached to those activities as the Secretary of the Navy designates, may administer—

(1) oaths required by law or regulation relating to claims against, or applications to, the United States of officers and of employees of the Department; and

(2) oaths of office to officers and employees of the Department.

(b) There may be no compensation for the administration of oaths under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 463.)

§ 7477. Transportation of dependents and household effects of civilian personnel stationed outside the United States: payment in lieu of transportation

(a) When civilian employees of the Department of the Navy are located at duty stations outside the United States, the dependents and household effects of such personnel may be transported—

(1) from the locations outside the United States to locations designated by such personnel or their dependents; and

(2) from those designated locations to the duty stations to which the personnel are ordered.

The Secretary of the Navy may determine the civilian employees whose dependents and household effects may be transported under this section.

(b) Authority to transport household effects under this section includes authority to pack and unpack those effects.

(c) Transportation of dependents and household effects is authorized under this section either before or after orders are issued relieving the civilian concerned from the duty station outside the United States. The transportation may be by Government or commercial facilities.

(d) In place of the transportation in kind authorized for dependents, the Secretary may authorize the payment, after the travel has been completed, of an amount equal to the commercial transportation costs, including taxes if paid, of all parts of the travel for which transportation in kind was not furnished.

(e) Current appropriations available for travel and transportation may be used for expenditures under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 463.)

§ 7478. Naval War College and Marine Corps University: civilian faculty members

(a) AUTHORITY OF SECRETARY.—The Secretary of the Navy may employ as many civilians as professors, instructors, and lecturers at a school of the Naval War College or of the Marine Corps University as the Secretary considers necessary.

(b) COMPENSATION OF FACULTY MEMBERS.—The compensation of persons employed under this section shall be as prescribed by the Secretary.

(c) APPLICATION TO CERTAIN FACULTY MEMBERS.—This section shall not apply with respect to professors, instructors, and lecturers employed at a school of the Naval War College or of the Marine Corps University if the duration of the principal course of instruction offered at the school or college involved is less than 10 months.

(Aug. 10, 1956, ch. 1041, 70A Stat. 464; Nov. 29, 1989, P.L. 101–189, § 1124(c), 103 Stat. 1559; Nov. 18, 1997, P.L. 105–85, § 1109(a), (b)(1), 111 Stat. 1927.)

§ 7479. Civil service mariners of Military Sealift Command: release of drug test results to Coast Guard

(a) RELEASE OF DRUG TEST RESULTS TO COAST GUARD.—The Secretary of the Navy may release to the Commandant of the Coast Guard the results of a drug test of any employee of the Department of the Navy who is employed in any capacity on board a vessel of the Military Sealift Command. Any such release shall be in accordance with the standards and procedures applicable to the disclosure and reporting to the Coast Guard of drug tests results and drug test records of individuals employed on vessels documented under the laws of the United States.

(b) WAIVER.—The results of a drug test of an employee may be released under subsection (a) without the prior written consent of the employee that is otherwise required under section 503(e) of the Supplemental Appropriations Act, 1987 (5 U.S.C. 7301 note).

(Added P.L. 105–261, § 1103(a), Oct. 17, 1998, 112 Stat. 2141.)

§ 7480. Special agents of the Naval Criminal Investigative Service: authority to execute warrants and make arrests

(a) AUTHORITY.—The Secretary of the Navy may authorize any Department of the Navy civilian employee described in subsection (b) to have the same authority to execute and serve warrants and other processes issued under the authority of the United States and to make arrests without a warrant as may be authorized under section 1585a of this title for special agents of the Defense Criminal Investigative Service.

(b) AGENTS TO HAVE AUTHORITY.—Subsection (a) applies to any employee of the Department of the Navy who is a special agent of the Naval Criminal Investigative Service (or any successor to that service) whose duties include conducting, supervising, or coordinating investigations of criminal activity in programs and operations of the Department of the Navy.

(c) GUIDELINES FOR EXERCISE OF AUTHORITY.—The authority provided under subsection (a) shall be exercised in accordance with guidelines prescribed by the Secretary of the Navy and approved by the Secretary of Defense and the Attorney General and any other applicable guidelines prescribed by the Secretary of the Navy, the Secretary of Defense, or the Attorney General.

(Added P.L. 106–398, § 1[554(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–126.)

CHAPTER 645—PROCUREMENT OF SUPPLIES AND SERVICES

Sec.
[7521. Repealed.]
7522. Contracts for research.
7523. Tolls and fares: payment or reimbursement.
7524. Marine mammals: use for national defense purposes.

[§ 7521. Repealed. P.L. 103–355, § 2001(j)(3)(C), Oct. 13, 1994, 108 Stat. 3303]

§ 7522. Contracts for research

(a) The Secretary of the Navy and, by direction of the Secretary, the Chief of Naval Research and the chiefs of bureaus may, without advertising, make contracts or amendments or modifications of contracts for services and materials necessary to conduct research and to make or secure reports, tests, models, or apparatus. A contractor supplying such services or materials need not be required to furnish a bond.

(b) This section does not authorize the use of the cost-plus-a-percentage-of-cost system of contracting.

(Aug. 10, 1956, ch. 1041, 70A Stat. 464; Dec. 12, 1980, P.L. 96–513, § 513(38), 94 Stat. 2934; Sept. 13, 1982, P.L. 97–258, § 3(b)(9), 96 Stat. 1064; Oct. 19, 1984, P.L. 98–525, § 1405(56)(B), 98 Stat. 2626; Oct. 13, 1994, P.L. 103–355, § 2001(j)(2), 108 Stat. 3303.)

§ 7523. Tolls and fares: payment or reimbursement

Naval appropriations chargeable for transportation or travel are available for the payment or reimbursement of ferry, bridge, and similar tolls and of streetcar, bus, and similar fares.

(Aug. 10, 1956, ch. 1041, 70A Stat. 464.)

§ 7524. Marine mammals: use for national defense purposes

(a) AUTHORITY.—Subject to subsection (c), the Secretary of Defense may authorize the taking of not more than 25 marine mammals each year for national defense purposes. Any such authorization may be made only with the concurrence of the Secretary of Commerce and after consultation with the Marine Mammal Commission established by section 201 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1401).

(b) HUMANE TREATMENT REQUIRED.—A mammal taken under this section shall be captured, supervised, cared for, transported, and deployed in a humane manner consistent with conditions established by the Secretary of Commerce.

(c) PROTECTION FOR ENDANGERED SPECIES.—A mammal may not be taken under this section if the mammal is determined to be a member of an endangered or threatened species under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533).

(d) APPLICATION OF OTHER ACT.—This section applies without regard to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.).

(Added P.L. 99–661, § 1354(a), Nov. 14, 1986, 100 Stat. 3996.)

CHAPTER 647—DISPOSAL OF OBSOLETE OR SURPLUS MATERIAL

Sec.
7541. Obsolete and other material: gift or sale to Boy Scouts of America, Naval Sea Cadet Corps and Young Marines of the Marine Corps League.
7541a. Uniform clothing: sale to Naval Sea Cadet Corps.
7542. Excess clothing: sale for distribution to needy.
7543. Useless ordnance material: disposition of proceeds on sale.
7544. Devices and trophies: transfer to other agencies.
7545. Obsolete material and articles of historical interest: loan or gift.
7546. Loan or gift of articles to ships' sponsors and donors.
7547. Equipment for instruction in seamanship: loan to military schools.

§ 7541. Obsolete and other material: gift or sale to Boy Scouts of America, Naval Sea Cadet Corps and Young Marines of the Marine Corps League

Subject to regulations under section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486), the Secretary of the Navy may—

(1) give obsolete material not needed for naval purposes; and

(2) sell other material that may be spared at a price representing its fair value;

to the Boy Scouts of America for the sea scouts, to the Naval Sea Cadet Corps for the sea cadets, and to the Young Marines of the Marine Corps League for the young marines. The cost of transportation and delivery of material given or sold under this section shall be charged to the Boy Scouts of America, to the Naval Sea Cadets, or to the Young Marines of the Marine Corps League, as the case may be.

(Aug. 10, 1956, ch. 1041, 70A Stat. 465; Jan. 3, 1975, P.L. 93–628, § 1, 88 Stat. 2147; Dec. 12, 1980, P.L. 96–513, § 513(39), 94 Stat. 2934.)

§ 7541a. Uniform clothing: sale to Naval Sea Cadet Corps

Subject to regulations under section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486), the Secretary of the Navy, under regulations prescribed by him, may sell any item of enlisted naval uniform clothing that may be spared, at a price representing its fair value, to the Naval Sea Cadet Corps for the sea cadets and to any Federal or State maritime academy having a department of naval science for the maritime cadets and midshipmen. The cost of transportation and delivery of items sold under this section shall be charged to the Naval Sea Cadet Corps and to such Federal and State maritime academies.

(Added P.L. 89–266, § 1(1), Oct. 19, 1965, 79 Stat. 990; amended P.L. 96–513, § 513(39), Dec. 12, 1980, 94 Stat. 2934.)

§ 7542. Excess clothing: sale for distribution to needy

(a) Subject to regulations under section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486), the Secretary of the Navy, under regulations prescribed by him, may sell, at nominal prices, to recognized charitable organizations, to States and subdivisions thereof, and to municipalities nonregulation and excess clothing that may be available for distribution to the needy. The clothing may be sold only if the purchaser agrees not to resell it but to give it to the needy.

(b) A fair proportionate allotment of clothing to be sold under this section shall be set aside for distribution in each State and the District of Columbia. An allotment so set aside may not be sold for other distribution until at least 30 days after the allotment was made.

(Aug. 10, 1956, ch. 1041, 70A Stat. 465; Dec. 12, 1980, P.L. 96–513, § 513(39), 94 Stat. 2934.)

§ 7543. Useless ordnance material: disposition of proceeds on sale

The net proceeds of sales of useless ordnance material by the Department of the Navy shall be covered into the Treasury.

(Aug. 10, 1956, ch. 1041, 70A Stat. 465.)

§ 7544. Devices and trophies: transfer to other agencies

(a) The Secretary of the Navy may, without reimbursement, transfer to the Secretary of the Treasury devices and trophies for the promotion of the sale of war bonds or victory bonds. The Secretary of the Treasury may sell or donate the devices and trophies for the promotion of the sale of such bonds.

(b) The Secretary of the Navy may, without reimbursement, transfer to any agency of the United States devices and trophies for scientific, experimental, monumental, or display purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 465.)

§ 7545. Obsolete material and articles of historical interest: loan or gift

(a) Subject to regulations under section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486), the Secretary of the Navy, under regulations prescribed by him, may lend or give, without expense to the United States, captured, condemned, or obsolete ordnance material, books, manuscripts, works of art, drawings, plans, and models, other condemned or obsolete material, trophies, and flags, and other material of historic interest not needed by the Department of the Navy, to—

(1) a State, Territory, Commonwealth, or possession of the United States, or political subdivision or municipal corporation thereof;

(2) the District of Columbia;

(3) a library;

(4) a historical society;

(5) an educational institution whose graduates or students fought in World War I or World War II;

(6) a soldiers' monument association;

(7) a State museum;

(8) a museum operated and maintained for educational purposes only, whose charter denies it the right to operate for profit;

(9) a post of the Veterans of Foreign Wars of the United States;

(10) a post of the American Legion;

(11) any other recognized war veterans' association; or

(12) a post of the Sons of Veterans Reserve.

(b) Records of the Government as defined in section 3301 of title 44 may not be disposed of under this section.

(c) If any disposition is authorized by this section and section 2572 of this title, the Secretary may make the gift or loan under either section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 466; Dec. 12, 1980, P.L. 96–513, § 513 (39), (40), 94 Stat. 2934, 2935; Feb. 10, 1996, P.L. 104–106, § 1061(i), 110 Stat. 443.)

§ 7546. Loan or gift of articles to ships' sponsors and donors

The Secretary of the Navy, under regulations prescribed by him and without expense to the United States, may lend or give—

(1) to the sponsor of a vessel the name plate or any small article of negligible or sentimental value from that vessel; and

(2) to any State, group, or organization named in section 7545 of this title any article, material, or equipment, including silver service, given by it.

(Aug. 10, 1956, ch. 1041, 70A Stat. 466.)

§ 7547. Equipment for instruction in seamanship: loan to military schools

(a) Upon the application of the governor of any State having a seacoast or bordering on any of the Great Lakes, the President may direct the Secretary of the Navy to lend to one well-established military school in that State that desires to instruct its cadets in elementary seamanship one fully equipped cutter for every 25 cadets attending the school, and such other equipment adequate for instruction in elementary seamanship as may be spared.

(b) To be eligible for a loan under this section a school must—

(1) have adequate facilities for cutter drill;

(2) have at least 75 cadets—

(A) at least 15 years of age;

(B) in uniform;

(C) receiving military instruction; and

(D) quartered in barracks under military regulations; and

(3) have the capacity to quarter and educate 150 cadets at one time.

(c) Whenever a loan is made under this section, the Secretary shall require a bond in double the value of the property for its care and return when required.

(Aug. 10, 1956, ch. 1041, 70A Stat. 466.)

CHAPTER 649—QUARTERS, UTILITIES, AND SERVICES

Sec.
7571. Quarters or other accommodations: to whom furnished.
7572. Quarters: accommodations in place of for members on sea duty.
7573. Quarters: temporary; transient members.
[7574, 7575. Repealed.]
7576. Quarters: extension telephones.
7577. Quarters: Nurse Corps officers; assignment in hospitals.
[7578. Repealed.]
7579. Officers' messes and quarters: limitations on employment of enlisted members.
7580. Heat and light for Young Men's Christian Association buildings.
7581. Marine Corps post laundries: disposition of receipts.
7582. Naval and Marine Corps Historical Centers: fee for providing historical information to the public.

§ 7571. Quarters or other accommodations: to whom furnished

(a) Under such regulations as the Secretary of the Navy prescribes, public quarters including heat, light, water, and refrigeration may be furnished for personnel in the following categories who are on active duty:

(1) Members of the naval service.

(2) Members of the Coast Guard when it is operating as a service in the Navy.

(3) Members of the National Oceanic and Atmospheric Administration serving with the Navy.

If public quarters are not available for any such member, the Secretary may provide lodging accommodations for him. Lodging accommodations so provided may not be occupied by the member's dependents.

(b) The Secretary may determine in any case whether public quarters are available within the meaning of any provision of law relating to the assignment of or commutation for public quarters.

(c) The Secretary, to the extent he considers proper, may delegate the authority conferred by subsection (a), except the authority to prescribe regulations, to any person in the Department of the Navy, with or without authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 467; Nov. 2, 1966, P.L. 89–718, § 8(a), 80 Stat. 1117; Dec. 12, 1980, P.L. 96–513, § 513(41), 94 Stat. 2935.)

§ 7572. Quarters: accommodations in place of for members on sea duty

(a) If public quarters are not available, the Secretary of the Navy may provide lodging accommodations for any—

(1) member of the naval service;

(2) member of the Coast Guard when it is operating as a service in the Navy; or

(3) member of the National Oceanic and Atmospheric Administration serving with the Navy;

on sea duty who is deprived of his quarters on board ship because of repairs or because of other conditions that make his quarters uninhabitable. Lodging accommodations so provided may not be occupied by the member's dependents.

[(b) Repealed. P.L. 105–261, § 1069(a)(7), Oct. 17, 1998, 112 Stat. 2136.]

(c) The Secretary, to the extent he considers proper, may delegate the authority conferred by subsection (a) to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(d)(1) After the expiration of the authority provided in subsection (b), an officer of the naval service on sea duty who is deprived of quarters on board ship because of repairs or because of other conditions that make the officer's quarters uninhabitable may be reimbursed for expenses incurred in obtaining quarters if it is impracticable to furnish the officer with accommodations under subsection (a).

(2) The total amount that an officer may be reimbursed under this subsection may not exceed an amount equal to the basic allowance for quarters of an officer of that officer's grade.

(3) This subsection shall not apply to an officer who is entitled to basic allowance for quarters.

(4) The Secretary may prescribe regulations to carry out this subsection.

(Aug. 10, 1956, ch. 1041, 70A Stat. 468; Nov. 2, 1966, P.L. 89–718, § 8(a), 80 Stat. 1117; Sept. 24, 1980, P.L. 96–357, § 3, 94 Stat. 1182; Dec. 12, 1980, P.L. 96–513, § 513(41), 94 Stat. 2935; Oct. 14, 1981, P.L. 97–60, § 207(b), 95 Stat. 1007; Sept. 24, 1983, P.L. 98–94, § 912, 97 Stat. 640; Oct. 19, 1984, P.L. 98–525, §§ 602(d)(3), 603(a), 1405(54), 98 Stat. 2536, 2625; Nov. 8, 1985, P.L. 99–145, § 606(a), 99 Stat. 638; Nov. 14, 1986, P.L. 99–661, § 603(a), 100 Stat. 3874; Dec. 5, 1991, P.L. 102–190, § 607, 105 Stat. 1375; Nov. 18, 1997, P.L. 105–85, § 603(d)(2)(D), 111 Stat. 1783; Oct. 17, 1998, P.L. 105–261, § 1069(a)(7), 112 Stat. 2136.)

§ 7573. Quarters: temporary; transient members

Temporary quarters may be furnished on a rental basis to transient members of the naval service with their dependents, for periods not exceeding 60 days, without loss of entitlement to basic allowance for housing under section 403 of title 37.

(Aug. 10, 1956, ch. 1041, 70A Stat. 468; Nov. 18, 1997, P.L. 105–85, § 603(d)(2)(E), 111 Stat. 1783.)

[§§ 7574, 7575. Repealed. P.L. 93–166, § 509(d), Nov. 29, 1973, 87 Stat. 678]

§ 7576. Quarters: extension telephones

(a) Under regulations prescribed by the Secretary of the Navy appropriated funds may be used to pay the cost of installation and use, other than for personal long distance calls, of extension telephones connecting public quarters occupied by personnel in the following categories with the switchboards of their official stations:

(1) Members of the naval service.

(2) Members of the Coast Guard when it is operating as a service in the Navy.

(3) Members of the National Oceanic and Atmospheric Administration serving with the Navy.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section, except the authority to

prescribe regulations, to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 469; Nov. 2, 1966, P.L. 89–718, § 8(a), 80 Stat. 1117; Dec. 12, 1980, P.L. 96–513, § 513(41), 94 Stat. 2935.)

§ 7577. Quarters: Nurse Corps officers; assignment in hospitals

Under such regulations as the Secretary of the Navy prescribes, officers in the Nurse Corps may be assigned quarters in naval hospitals.

(Aug. 10, 1956, ch. 1041, 70A Stat. 469.)

[§ 7578. Repealed. P.L. 85–861, § 36B(24), Sept. 2, 1958, 72 Stat. 1571]

§ 7579. Officers' messes and quarters: limitations on employment of enlisted members

(a) Under such regulations as the Secretary of the Navy prescribes, enlisted members of the naval service and enlisted members of the Coast Guard when it is operating as a service in the Navy may be assigned to duty in a service capacity in officers' messes and public quarters where the Secretary finds that this use of the members is desirable for military reasons.

(b) Notwithstanding any other provision of law, retired enlisted members of the naval service and members of the Fleet Reserve and the Fleet Marine Corps Reserve may, when not on active duty, be voluntarily employed in any service capacity in officers' messes and public quarters without additional expense to the United States.

(c) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section, except the authority to prescribe regulations, to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 470.)

§ 7580. Heat and light for Young Men's Christian Association buildings

The Secretary of the Navy may furnish, without charge, heat and light to any building of the Young Men's Christian Association located at a naval activity.

(Aug. 10, 1956, ch. 1041, 70A Stat. 470.)

§ 7581. Marine Corps post laundries: disposition of receipts

(a) Money received for laundry work performed by Marine Corps post laundries shall be used to pay the cost of maintenance and operation of those laundries. Any amount remaining at the end of the fiscal year after the cost has been so paid shall be deposited in the Treasury to the credit of the appropriation from which the cost of operating the laundries is paid.

(b) The receipts and expenditures of Marine Corps post laundries shall be accounted for as public funds.

(Aug. 10, 1956, ch. 1041, 70A Stat. 470.)

§ 7582. Naval and Marine Corps Historical Centers: fee for providing historical information to the public

(a) AUTHORITY.—Except as provided in subsection (b), the Secretary of the Navy may charge a person a fee for providing the person with information from the United States Naval Historical Center or the Marine Corps Historical Center that is requested by that person.

(b) EXCEPTIONS.—A fee may not be charged under this section—

(1) to a person for information that the person requests to carry out a duty as a member of the armed forces or an officer or employee of the United States; or

(2) for a release of information under section 552 of title 5.

(c) LIMITATION ON AMOUNT.—A fee charged for providing information under this section may not exceed the cost of providing the information.

(d) RETENTION OF FEES.—Amounts received under subsection (a) for providing information from the United States Naval Historical Center or the Marine Corps Historical Center in any fiscal year shall be credited to the appropriation or appropriations charged the costs of providing information to the public from that historical center during that fiscal year.

(e) DEFINITIONS.—In this section:

(1) The term "United States Naval Historical Center" means the archive for historical records and materials of the Navy that the Secretary of the Navy designates as the primary archive for such records and materials.

(2) The term "Marine Corps Historical Center" means the archive for historical records and materials of the Marine Corps that the Secretary of the Navy designates as the primary archive for such records and materials.

(3) The terms "officer of the United States" and "employee of the United States" have the meanings given the terms "officer" and "employee", respectively, in sections 2104 and 2105, respectively, of title 5.

(Added P.L. 106–398, § 1[1085(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–288.)

CHAPTER 651—SHIPS' STORES AND COMMISSARY STORES

Sec.
7601. Sales: members of naval service and Coast Guard; widows and widowers; civilian employees and other persons.
7602. Sales: members of Army and Air Force; prices.
7603. Sales: veterans under treatment.
7604. Ships' stores: sale of goods and services.
7605. Acceptance of Government checks outside the United States.
7606. Subsistence and other supplies: members of armed forces; veterans; executive or military departments and employees; prices.

§ 7601. Sales: members of naval service and Coast Guard; widows and widowers; civilian employees and other persons

(a) Such stores as the Secretary of the Navy designates may be procured and sold to members of the naval service, members of the Coast Guard, and widows and widowers of such members.

(b) The Secretary may, by regulation, provide for the procurement and sale of stores designated by him to such civilian officers and employees of the United States, and such other persons, as he considers proper—

(1) at military installations outside the United States; and

(2) at military installations inside the United States where he determines that it is impracticable for those civilian officers, employees, and persons to obtain those stores from private agencies without impairing the efficient operation of naval activities.

However, sales to civilian officers and employees inside the United States may be made only to those residing within military installations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 470; Nov. 8, 1985, P.L. 99–145, § 1301(c)(3)(A), 99 Stat. 736.)

§ 7602. Sales: members of Army and Air Force; prices

The Navy and the Marine Corps shall sell subsistence supplies to any member of the Army or the Air Force at prices charged members of the naval service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 471.)

§ 7603. Sales: veterans under treatment

A person who has been separated honorably or under honorable conditions from the Army, the Navy, the Air Force, or the Marine Corps and who is receiving care and medical treatment from the Public Health Service or the Department of Veterans Affairs may buy subsistence supplies and other supplies, except articles of uniform, from the Navy and the Marine Corps at prices charged members of the naval service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 471; Nov. 29, 1989, P.L. 101–189, § 1621(a)(1), 103 Stat. 1602.)

§ 7604. Ships' stores: sale of goods and services

(a) IN GENERAL.—Under such regulations and at such prices as the Secretary of the Navy may prescribe, the Secretary may provide for the sale of goods and services from ships' stores to members of the naval service and to such other persons as provided by law.

(b) INCIDENTAL SERVICES.—The Secretary of the Navy may provide financial services, space, utilities, and labor to ships' stores on a nonreimbursable basis.

(c) ITEMS SOLD.—Merchandise sold by ship stores afloat shall include items in the following categories:

(1) Health, beauty, and barber items.

(2) Prerecorded music and videos.

(3) Photographic batteries and related supplies.

(4) Appliances and accessories.

(5) Uniform items, emblematic and athletic clothing, and equipment.

(6) Luggage and leather goods.

(7) Stationery, magazines, books, and supplies.

(8) Sundry, games, and souvenirs.

(9) Beverages and related food and snacks.

(10) Laundry, tailor, and cleaning supplies.

(11) Tobacco products.

(Aug. 10, 1956, ch. 1041, 70A Stat. 471; Nov. 2, 1966, P.L. 89–718, § 44, 80 Stat. 1120; revised in its entirety P.L. 101–510, § 329(a), Nov. 5, 1990, 104 Stat. 1534; amended P.L. 103–160, § 371(c), Nov. 30, 1993, 107 Stat. 1635.)

§ 7605. Acceptance of Government checks outside the United States

Notwithstanding section 3302(a) of title 31, the Secretary of the Navy may authorize the officer in charge of any commissary store or ship's store ashore located outside the United States to—

(1) accept any Government check tendered by a retired member of the Navy or the Marine Corps, a member of the Naval Reserve or the Marine Corps Reserve, or a member of the Fleet Reserve or the Fleet Marine Corps Reserve, if the member is the payee of the check and the check is tendered in payment of amounts due from the member to the store; and

(2) refund in cash any difference between the amount due and the amount of the tendered check.

(Aug. 10, 1956, ch. 1041, 70A Stat. 471; Dec. 12, 1980, P.L. 96–513, § 513(42), 94 Stat. 2935; Sept. 13, 1982, P.L. 97–258, § 3(b)(10), 96 Stat. 1064.)

§ 7606. Subsistence and other supplies: members of armed forces; veterans; executive or military departments and employees; prices

(a)(1) The Secretary of the Navy shall procure and sell, for cash or credit—

(A) articles designated by the Secretary to members of the Navy and Marine Corps; and

(B) items of individual clothing and equipment to members of the Navy and Marine Corps, under such restrictions as the Secretary may prescribe.

(2) An account of sales on credit shall be kept and the amount due reported to the Secretary. Except for articles and items acquired through the use of working capital funds under section 2208 of this title, sales of articles shall be at cost, and sales of individual clothing and equipment shall be at average current prices, including overhead, as determined by the Secretary.

(b) The Secretary shall sell subsistence supplies to members of other armed forces at the prices at which like property is sold to members of the Navy and Marine Corps.

(c) The Secretary may sell serviceable supplies, other than subsistence supplies, to members of other armed forces for the buyers' use in the service. The prices at which the supplies are sold shall be the same prices at which like property is sold to members of the Navy and Marine Corps.

(d) A person who has been discharged honorably or under honorable conditions from the Army, Navy, Air Force or Marine Corps and who is receiving care and medical treatment from the Public Health Service or the Department of Veterans Affairs may buy subsistence supplies and other supplies, except articles of uniform, at the prices at which like property is sold to members of the Navy and Marine Corps.

(e) Under such conditions as the Secretary may prescribe, exterior articles of uniform may be sold to a person who has been discharged honorably or under honorable conditions from the Navy or Marine Corps, at the prices at which like articles are sold to members of the Navy or Marine Corps. This subsection does not modify section 772 or 773 of this title.

(f) Under regulations prescribed by the Secretary, payment for subsistence supplies shall be made in cash or by commercial credit.

(g)(1) The Secretary may provide for the procurement and sale of stores designated by the Secretary to such civilian officers and employees of the United States, and such other persons, as the Secretary considers proper—

(A) at military installations outside the United States; and

(B) subject to paragraph (2), at military installations inside the United States where the Secretary determines that it is impracticable for those civilian officers, employees, and persons to obtain such stores from commercial enterprises without impairing the efficient operation of military activities.

(2) Sales to civilian officers and employees inside the United States may be made under paragraph (1) only to civilian officers and employees residing within military installations.

(h) Appropriations for subsistence of the Navy or Marine Corps may be applied to the purchase of subsistence supplies for sale to members of the Navy and Marine Corps on active duty for the use of such members and their families.

(Added P.L. 104–106, § 375(a)(1), Feb. 10, 1996, 110 Stat. 281; amended P.L. 105–85, § 1073(a)(63), Nov. 18, 1997, 111 Stat. 1903.)

CHAPTER 653—CLAIMS

Sec.
7621. Definitions.
7622. Admiralty claims against the United States.
7623. Admiralty claims by the United States.
[7624, 7625. Repealed.]

§ 7621. Definitions

(a) In this chapter "vessel in the naval service" means—

(1) any vessel of the Navy, manned by the Navy, or chartered on bareboat charter to the Navy; or

(2) when the Coast Guard is operating as a service in the Navy, any vessel of the Coast Guard, manned by the Coast Guard, or chartered on bareboat charter to the Coast Guard.

(b) 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. 472.)

§ 7622. Admiralty claims against the United States

(a) The Secretary of the Navy may settle, or compromise, and pay in an amount not more than $1,000,000 an admiralty claim against the United States for—

(1) damage caused by a vessel in the naval service or by other property under the jurisdiction of the Department of the Navy;

(2) compensation for towage and salvage service, including contract salvage, rendered to a vessel in the naval service or to other property under the jurisdiction of the Department of the Navy; or

(3) damage caused by a maritime tort committed by any agent or employee of the Department of the Navy or by property under the jurisdiction of the Department of the Navy.

(b) If a claim under this section is settled or compromised for more than $1,000,000, the Secretary shall certify it to Congress.

(c) In any case where the amount to be paid is not more than $100,000, the Secretary may delegate his authority under this section to any person designated by him.

(d) Upon acceptance of payment by the claimant, the settlement or compromise of a claim under this section is final and conclusive notwithstanding any other provision of law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 472; July 7, 1965, P.L. 89–67, 79 Stat. 212; Aug. 29, 1972, P.L. 92–417, § 1(5), 86 Stat. 654; Nov. 29, 1989, P.L. 101–189, § 1633, 103 Stat. 1608.)

§ 7623. Admiralty claims by the United States

(a) The Secretary of the Navy may settle, or compromise, and receive payment of a claim by the United States for damage to property under the jurisdiction of the Department of the Navy or

property for which the Department has assumed an obligation to respond for damage, if—

(1) the claim is—

(A) of a kind that is within the admiralty jurisdiction of a district court of the United States; or

(B) for damage caused by a vessel or floating object; and

(2) the net amount to be received by the United States is not more than $1,000,000.

(b) In exchange for payment of an amount found to be due the United States under this section, the Secretary may execute a release of the claim on behalf of the United States. Amounts received under this section shall be covered into the Treasury.

(c) In any case where the amount to be received by the United States is not more than $100,000, the Secretary may delegate his authority under this section to any person designated by him.

(d) Upon acceptance of payment by the Secretary, the settlement or compromise of a claim under this section is final and conclusive notwithstanding any other provision of law.

(e) This section does not apply to any claim while there is pending as to that claim a suit filed by or against the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 472; July 7, 1965, P.L. 89–67, 79 Stat. 212; Nov. 29, 1989, P.L. 101–189, § 1633, 103 Stat. 1608.)

[§ 7624. Repealed. P.L. 86–533, § 1(10)(A), June 29, 1960, 74 Stat. 247]

[§ 7625. Repealed. P.L. 87–769, § 1(2)(A), Oct. 9, 1962, 76 Stat. 768]

CHAPTER 655—PRIZE

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§ 7651. Scope of chapter

(a) This chapter applies to all captures of vessels as prize during war by authority of the United States or adopted and ratified by the President. However, this chapter does not affect the right of the Army or the Air Force, while engaged in hostilities, to capture wherever found and without prize procedure—

(1) enemy property; or

(2) neutral property used or transported in violation of the obligations of neutrals under international law.

(b) As used in this chapter—

(1) "vessel" includes aircraft; and

(2) "master" includes the pilot or other person in command of an aircraft.

(c) Property seized or taken upon the inland waters of the United States by its naval forces is not maritime prize. All such property shall be delivered promptly to the proper officers of the courts.

(d) Nothing in this chapter may be construed as contravening any treaty of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 474.)

§ 7652. Jurisdiction

(a) The United States district courts have original jurisdiction, exclusive of the courts of the States, of each prize and each proceeding for the condemnation of property taken as prize, if the prize is—

(1) brought into the United States, or the Territories, Commonwealths, or possessions;

(2) brought into the territorial waters of a cobelligerent;

(3) brought into a locality in the temporary or permanent possession of, or occupied by, the armed forces of the United States; or

(4) appropriated for the use of the United States.

(b) The United States district courts, exclusive of the courts of the States, also have original jurisdiction of a prize cause in which the prize property—

(1) is lost or entirely destroyed; or

(2) cannot be brought in for adjudication because of its condition.

(c) The jurisdiction conferred by this section of prizes brought into the territorial waters of a cobelligerent may not be exercised, nor may prizes be appropriated for the use of the United States within those territorial waters, unless the government having jurisdiction over those waters consents to the exercise of the jurisdiction or to the appropriation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 474.)

§ 7653. Court in which proceedings brought

(a) If a prize is brought into a port of the United States, or the Territories, Commonwealths, or possessions, proceedings for the adjudication of the prize cause shall be brought in the district in which the port is located.

(b) If a prize is brought into the territorial waters of a cobelligerent, or is brought into a locality in the temporary or permanent possession of, or occupied by, the armed forces of the United States, or is appropriated for the use of the United States, before proceedings are started, the venue of the proceedings for adjudication of the cause shall be in the judicial district selected by the Attorney General, or his designee, for the convenience of the United States.

(c) If the prize property is lost or entirely destroyed or if, because of its condition, no part of it has been or can be sent in for adjudication, proceedings for adjudication of the cause may be brought in any district designated by the Secretary of the Navy. In such cases the proceeds of anything sold shall be deposited with the Treasurer of the United States or public depositary in or nearest the district designated by the Secretary, subject to the orders of the court for that district.

(Aug. 10, 1956, ch. 1041, 70A Stat. 474.)

§ 7654. Effect of failure to start proceedings

If a vessel is captured as prize and no proceedings for adjudication are started within a reasonable time, any party claiming the captured property may, in any district court as a court of prize—

(1) move for a monition to show cause why such proceedings shall not be started; or

(2) bring an original suit for restitution.

The monition issued in either case shall be served on the United States Attorney for the district, on the Secretary of the Navy, and on such other persons as are designated by order of the court.

(Aug. 10, 1956. ch. 1041, 70A Stat. 475.)

§ 7655. Appointment of prize commissioners and special prize commissioners

(a) In each judicial district there may be not more than three prize commissioners, one of whom is the naval prize commissioner. They shall be appointed by the district court for service in connection with any prize cause in which proceedings are brought under section 7653(a) or (c) of this title. The naval prize commissioner must be an officer of the Navy whose appointment is approved by the Secretary of the Navy. The naval prize commissioner shall protect the interests of the Department of the Navy in the prize property. At least one of the other commissioners must be a member of the bar of the court, of not less than three years' standing, who is experienced in taking depositions.

(b) A district court may appoint special prize commissioners to perform abroad, in connection with any prize cause in which proceedings are brought under section 7653(b) of this title, the duties prescribed for prize commissioners, and, in connection with those causes, to exercise anywhere such additional powers and perform such additional duties as the court considers proper, including the duties prescribed by this chapter for United States marshals. The court may determine the number and qualifications of the special prize commissioners it appoints, except that for each cause there shall be at least one naval special prize commissioner. The naval special prize commissioner must be an officer of the Navy whose appointment is approved by the Secretary. The naval special prize commissioner shall protect the interests of the Department of the Navy in the prize property.

(Aug. 10, 1956, ch. 1041, 70A Stat. 475.)

§ 7656. Duties of United States attorney

(a) The interests of the United States in a prize cause shall be represented by the United States attorney for the judicial district in which the prize cause is adjudicated. The United States attorney shall protect the interests of the United States and shall examine all fees, costs, and expenses sought to be charged against the prize fund.

(b) In a judicial district where one or more prize causes are pending the United States attorney shall send to the Secretary of the Navy, at least once every three months, a statement of all such causes in the form and covering the particulars required by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 475.)

§ 7657. Duties of commanding officer of capturing vessel

(a) The commanding officer of a vessel making a capture shall—

(1) secure the documents of the captured vessel, including the log, and the documents of cargo, together with all other documents and papers, including letters, found on board;

(2) inventory and seal all the documents and papers;

(3) send the inventory and documents and papers to the court in which proceedings are to be had, with a written statement—

(A) that the documents and papers sent are all the papers found, or explaining the reasons why any are missing; and

(B) that the documents and papers sent are in the same condition as found, or explaining the reasons why any are in different condition;

(4) send as witnesses to the prize court the master, one or more of the other officers, the supercargo, purser, or agent of the prize, and any other person found on board whom he believes to be interested in or to know the title, national character, or destination of the prize, and if any of the usual witnesses cannot be sent, send the reasons therefor to the court; and

(5) place a competent prize master and a prize crew on board the prize and send the prize, the witnesses, and all documents and papers, under charge of the prize master, into port for adjudication.

(b) In the absence of instructions from higher authority as to the port to which the prize shall be sent for adjudication, the commanding officer of the capturing vessel shall select the port that he considers most convenient in view of the interests of probable claimants.

(c) If the captured vessel, or any part of the captured property, is not in condition to be sent in for adjudication, the commanding officer of the capturing vessel shall have a survey and an appraisal made by competent and impartial persons. The reports of the survey and the appraisal shall be sent to the court in which proceedings are to be had. Property so surveyed and appraised, unless appropriated for the use of the United States, shall be sold under authority of the commanding officer present. Proceeds of the sale shall be deposited with the Treasurer of the United States or in the public depositary most accessible to the court in which proceedings are to be had and subject to its order in the cause.

(Aug. 10, 1956, ch. 1041, 70A Stat. 476.)

§ 7658. Duties of prize master

The prize master shall take the captured vessel to the selected port. On arrival he shall—

(1) deliver immediately to a prize commissioner the documents and papers and the inventory thereof;

(2) make affidavit that the documents and papers and the inventory thereof and the prize property are the same and are in the same condition as delivered to him, or explaining any loss or absence or change in their condition;

(3) report all information respecting the prize and her capture to the United States attorney;

(4) deliver the persons sent as witnesses to the custody of the United States marshal; and

(5) retain the prize in his custody until it is taken therefrom by process from the prize court.

(Aug. 10, 1956, ch. 1041, 70A Stat. 476.)

§ 7659. Libel and proceedings by United States attorney

(a) Upon receiving the report of the prize master directed by section 7658 of this title, the United States attorney for the district shall promptly—

(1) file a libel against the prize property;

(2) obtain a warrant from the court directing the marshal to take custody of the prize property; and

(3) proceed to obtain a condemnation of the property.

(b) In connection with the condemnation proceedings the United States attorney shall insure that the prize commissioners—

(1) take proper preparatory evidence; and

(2) take depositions de bene esse of the prize crew and of other transient persons who know any facts bearing on condemnation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 477.)

§ 7660. Duties of prize commissioners

One or more of the prize commissioners shall—

(1) receive from the prize master the documents and papers of the captured vessel and the inventory thereof;

(2) take the affidavit of the prize master required by section 7658 of this title;

(3) take promptly, in the manner prescribed by section 7661 of this title, the testimony of the witnesses sent in;

(4) take, at the request of the United States attorney, on interrogatories prescribed by the court, the depositions de bene esse of the prize crew and others;

(5) examine and inventory the prize property;

(6) apply to the court for an order to the marshal to unload the cargo, if this is necessary to that examination and inventory;

(7) report to the court, and notify the United States attorney, whether any of the prize property requires immediate sale in the interest of all parties;

(8) report to the court, from time to time, any matter relating to the condition, custody, or disposal of the prize property requiring action by the court;

(9) return to the court sealed and secured from inspection—

(A) the documents and papers received, duly scheduled and numbered;

(B) the preparatory evidence;

(C) the evidence taken de bene esse; and

(D) their inventory of the prize property; and

(10) report to the Secretary of the Navy, if, in their judgment, any of the prize property is useful to the United States in the prosecution of war.

(Aug. 10, 1956, ch. 1041, 70A Stat. 477.)

§ 7661. Interrogation of witnesses by prize commissioners

Witnesses before the prize commissioners shall be questioned separately, on interrogatories prescribed by the court, in the manner usual in prize courts. Without special authority from the court, the witnesses may not see the interrogatories, documents, or papers, or consult with counsel or with other persons interested in the cause. Witnesses who have the rights of neutrals shall be discharged as soon as practicable.

(Aug. 10, 1956, ch. 1041, 70A Stat. 477.)

§ 7662. Duties of marshal

The marshal shall—

(1) keep in his custody all persons found on board a prize and sent in as witnesses, until they are released by the prize commissioners or the court;

(2) keep safely in his custody all prize property under warrant from the court;

(3) report to the court any cargo or other property that he thinks should be unloaded and stored or sold;

(4) insure the prize property, if in his judgment it is in the interest of all concerned;

(5) have charge of the sale of the property, if a sale is ordered, and be responsible for the conduct of the sale in the manner required by the court, for the collection of the gross proceeds, and for their immediate deposit with the Treasurer of the United States or public depositary nearest the place of sale, subject to the order of the court in the cause; and

(6) submit to the Secretary of the Navy, at such times as the Secretary designates, a full statement of the condition of the prize and of the disposal made thereof.

(Aug. 10, 1956, ch. 1041, 70A Stat. 478.)

§ 7663. Prize property appropriated for the use of the United States

(a) Any officer or agency designated by the President may appropriate for the use of the United States any captured vessel, arms, munitions, or other material taken as prize. The department or agency for whose use the prize property is appropriated shall deposit the value of the property with the Treasurer of the United

States or with the public depositary nearest to the court in which the proceedings are to be had, subject to the orders of the court.

(b) Whenever any captured vessel, arms, munitions, or other material taken as prize is appropriated for the use of the United States before that property comes into the custody of the prize court, it shall be surveyed, appraised, and inventoried by persons as competent and impartial as can be obtained, and the survey, appraisal, and inventory sent to the court in which the proceedings are to be had. If the property is appropriated after it comes into the custody of the court, sufficient notice shall be given to enable the court to have the property appraised for the protection of the rights of the claimants.

(c) Notwithstanding subsections (a) and (b), in any case where prize property is appropriated for the use of the United States, a prize court may adjudicate the cause on the basis of an inventory and survey and an appropriate undertaking by the United States to respond for the value of the property, without either an appraisal or a deposit of the value of the prize with the Treasurer of the United States or a public depositary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 478.)

§ 7664. Delivery of property on stipulation

(a) Prize property may be delivered to a claimant on stipulation, deposit, or other security, if—

(1) the claimant satisfies the court that the property has a peculiar and intrinsic value to him, independent of its market value;

(2) the court is satisfied that the rights and interests of the United States or of other claimants will not be prejudiced;

(3) an opportunity is given to the United States attorney and the naval prize commissioner or the naval special prize commissioner to be heard as to the appointment of appraisers; and

(4) a satisfactory appraisal is made.

(b) Money collected on a stipulation, or deposited instead of it, that does not represent costs shall be deposited with the Treasurer of the United States or a public depositary in the same manner as proceeds of a sale.

(Aug. 10, 1956, ch. 1041, 70A Stat. 479.)

§ 7665. Sale of prize

(a) The court shall order a sale of prize property if—

(1) the property has been condemned;

(2) the court finds, at any stage of the proceedings, that the property is perishable, liable to deteriorate, or liable to depreciate in value; or

(3) the cost of keeping the property is disproportionate to its value.

(b) The court may order a sale of the prize property if, after the return-day on the libel, all the parties in interest who have appeared in the cause agree to it.

(c) An appeal does not prevent the order of a sale under this section or the execution of such an order.

(Aug. 10, 1956, ch. 1041, 70A Stat. 479.)

§ 7666. Mode of making sale

(a) If a sale of prize property is ordered by the court, the marshal shall—

(1) prepare and circulate full catalogues and schedules of the property to be sold and return a copy of each to the court;

(2) advertise the sale fully and conspicuously by posters and in newspapers ordered by the court;

(3) give notice to the naval prize commissioner at least five days before the sale; and

(4) keep the goods open for inspection for at least three days before the sale.

(b) An auctioneer of known skill in the business to which the sale pertains shall be employed by the Secretary of the Navy to make the sale. The auctioneer, or his agent, shall collect and deposit the gross proceeds of the sale. The auctioneer and his agent are responsible to the marshal for the conduct of the sale and the collection and deposit of the gross proceeds.

(Aug. 10, 1956, ch. 1041, 70A Stat. 479.)

§ 7667. Transfer of prize property to another district for sale

(a) In the case of any prize property ordered to be sold, if the court believes that it will be in the interest of all parties to have the property sold in a judicial district other than the one in which the proceedings are pending, the court may direct the marshal to transfer the property to the district selected by the court for the sale, and to insure it. In such a case the court shall give the marshal proper orders as to the time and manner of conducting the sale.

(b) When so ordered the marshal shall transfer the property and keep it safely. He is responsible for its sale in the same manner as if the property were in his own district and for the deposit of the gross proceeds with the Treasurer of the United States or public depositary nearest to the place of sale, subject to the order of the court for the district where the adjudication is pending.

(c) The necessary expenses of insuring, transferring, receiving, keeping, and selling the property are a charge upon it and upon the proceeds. Whenever any such expense is paid in advance by the marshal, any amount not repaid to him from the proceeds shall be allowed to him as in the case of expenses incurred in suits in which the United States is a party.

(d) If the Secretary of the Navy believes that it will be in the interest of all parties to have the property sold in a judicial district other than the one in which the proceedings are pending, he may, either by a general regulation or by a special direction in the cause, require the marshal to transfer the property from the district in which the judicial proceedings are pending to any other district for sale. In such a case proceedings shall be had as if the transfer had been made by order of the court.

(Aug. 10, 1956, ch. 1041, 70A Stat. 479.)

§ 7668. Disposition of prize money

The net proceeds of all property condemned as prize shall be decreed to the United States and shall be ordered by the court to be paid into the Treasury.

(Aug. 10, 1956, ch. 1041, 70A Stat. 480.)

§ 7669. Security for costs

The court may require any party to give security for costs at any stage of the cause and upon filing an appeal.

(Aug. 10, 1956, ch. 1041, 70A Stat. 480.)

§ 7670. Costs and expenses a charge on prize property

(a) Costs and expenses allowed by the court incident to the bringing in, custody, preservation, insurance, and sale or other disposal of prize property are a charge upon the property and shall be paid from the proceeds thereof, unless the court decrees restitution free from such a charge.

(b) Charges for work and labor, materials furnished, or money paid must be supported by affidavit or vouchers.

(Aug. 10, 1956, ch. 1041, 70A Stat. 480.)

§ 7671. Payment of costs and expenses from prize fund

(a) Payment may not be made from a prize fund except upon the order of the court. The court may, at any time, order the payment, from the deposit made with the Treasurer or public depositary in the cause, or costs or charges accrued and allowed.

(b) When the cause is finally disposed of, the court shall order the Treasurer or public depositary to pay the costs and charges allowed and unpaid. If the final decree is for restitution, or if there is no money subject to the order of the court in the cause, costs or charges allowed by the court and not paid by the claimants shall be paid out of the fund for paying the expenses of suits in which the United States is a party or is interested.

(Aug. 10, 1956, ch. 1041, 70A Stat. 480.)

§ 7672. Recaptures: award of salvage, costs, and expenses

(a) If a vessel or other property that has been captured by a force hostile to the United States is recaptured, and the court believes that the property had not been condemned as prize by competent authority before its recapture, the court shall award an appropriate sum as salvage.

(b) If the recaptured property belonged to the United States, it shall be restored to the United States, and costs and expenses ordered to be paid by the court shall be paid from the Treasury.

(c) If the recaptured property belonged to any person residing within or under the protection of the United States, the court shall restore the property to its owner upon his claim and on payment of such sum as the court may award as salvage, costs, and expenses.

(d) If the recaptured property belonged to any person permanently residing within the territory and under the protection of any foreign government in amity with the United States, and, by the law or usage of that government, the property of a citizen of the

United States would be restored under like circumstances of recapture, the court shall, upon the owner's claim, restore the property to him under such terms as the law or usage of that government would require of a citizen of the United States under like circumstances. If no such law or usage is known, the property shall be restored upon the payment of such salvage, costs, and expenses as the court orders.

(e) Amounts awarded as salvage under this section shall be paid to the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 481.)

§ 7673. Allowance of expenses to marshals

The marshal shall be allowed his actual and necessary expenses for the custody, care, preservation, insurance, and sale or other disposal of the prize property, and for executing any order of the court in the prize cause. Charges of the marshal for expenses or disbursements shall be allowed only upon his oath that they have been necessarily incurred for the purpose stated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 481.)

§ 7674. Payment of witness fees

If the court allows fees to any witness in a prize cause, or fees for taking evidence out of the district in which the court sits, and there is no money subject to its order in the cause, the marshal shall pay the fees. He shall be repaid from any money deposited to the order of the court in the cause. Any amount not so repaid to the marshal shall be allowed him as witness fees paid by him in cases in which the United States is a party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 481.)

§ 7675. Commissions of auctioneers

(a) The Secretary of the Navy may establish a scale of commissions to be paid to auctioneers employed to make sales of prize property. These commissions are in full satisfaction of expenses as well as services. The scale may in no case allow a commission in excess of—

(1) ½ of 1 percent on any amount exceeding $10,000 on the sale of a vessel; and

(2) 1 percent of any amount exceeding $10,000 on the sale of other prize property.

(b) If no such scale is established, auctioneers in prize causes shall be paid such compensation as the court considers just under the circumstances of each case.

(Aug. 10, 1956, ch. 1041, 70A Stat. 481.)

§ 7676. Compensation of prize commissioners and special prize commissioners

(a) Naval prize commissioners and naval special prize commissioners may not receive compensation for their services in prize causes other than that to which they are entitled as officers of the Navy.

(b) Prize commissioners and special prize commissioners, except naval prize commissioners and naval special prize commis-

sioners, are entitled to just and suitable compensation for their services in prize causes. The amount of compensation in each cause shall be determined by the court and allowed as costs.

(c) Annually, on the anniversary of his appointment, each prize commissioner and special prize commissioner, except a naval prize commissioner or a naval special prize commissioner, shall submit to the Attorney General an account of all amounts received for his services in prize causes within the previous year. Of the amounts reported, each such commissioner may retain not more than $3,000, which is in full satisfaction for all his services in prize causes for that year. He shall pay any excess over that amount into the Treasury.

(Aug. 10, 1956, ch. 1041, 70A Stat. 482.)

§ 7677. Accounts of clerks of district courts

(a) The clerk of each district court, for the purpose of the final decree in each prize cause, shall keep account of—

(1) the amount deposited with the Treasurer or public depositary, subject to the order of the court in the cause; and

(2) the amounts ordered to be paid therefrom as costs and charges.

(b) The clerk shall draw the orders of the court for the payment of costs and allowances and for the disposition of the residue of the prize fund in each cause.

(c) The clerk shall send to the Secretary of the Treasury and the Secretary of the Navy—

(1) copies of final decrees in prize causes; and

(2) a semi-annual statement of the amounts allowed by the court, and ordered to be paid, within the preceding six months to the prize commissioners and special prize commissioners for their services.

(Aug. 10, 1956, ch. 1041, 70A Stat. 482.)

§ 7678. Interfering with delivery, custody, or sale of prize property

Whoever willfully does, or aids or advises in the doing of, any act relating to the bringing in, custody, preservation, sale, or other disposition of any property captured as prize, or relating to any documents or papers connected with the property or to any deposition or other document or paper connected with the proceedings, with intent to defraud, delay, or injure the United States or any claimant of that property, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(Aug. 10, 1956, ch. 1041, 70A Stat. 482.)

§ 7679. Powers of district court over prize property notwithstanding appeal

Notwithstanding an appeal, the district court may make and execute all necessary orders for the custody and disposal of prize property.

(Aug. 10, 1956, ch. 1041, 70A Stat. 483.)

§ 7680. Appeals and amendments in prize causes

(a) A United States Court of Appeals may allow an appeal in a prize cause if it appears that a notice of appeal was filed with the clerk of the district court within thirty days after the final decree in that cause.

(b) A United States Court of Appeals, if in its opinion justice requires it, may allow amendments in form or substance of any appeal in a prize cause.

(Aug. 10, 1956, ch. 1041, 70A Stat. 483.)

§ 7681. Reciprocal privileges to cobelligerent

(a) A cobelligerent of the United States that consents to the exercise of jurisdiction conferred by section 7652(a) of this title with respect to any prize of the United States brought into the territorial waters of the cobelligerent or appropriated for the use of the United States within those territorial waters shall be given, upon proclamation by the President of the United States, like privileges with respect to any prize captured under the authority of that cobelligerent and brought into the territorial waters of the United States or appropriated for the use of the cobelligerent within the territorial waters of the United States.

(b) Reciprocal recognition shall be given to the jurisdiction acquired by courts of a cobelligerent under this section and full faith and credit shall be given to all proceedings had or judgments rendered in the exercise of that jurisdiction.

(Aug. 10, 1956, ch. 1041, 70A Stat. 483.)

CHAPTER 657—STAY OF JUDICIAL PROCEEDINGS

Sec.
7721. Scope of chapter.
7722. Stay of suit.
7723. Stay of proceedings for preserving evidence after stay of suit.
7724. Stay of proceedings for taking evidence before suit is filed.
7725. Stay extended or shortened.
7726. Reconsideration of stay.
7727. Duration of stay.
7728. Restricted certificate.
7729. Investigation before issue of certificate.
7730. Evidence admissible when witness is not available.

§ 7721. Scope of chapter

(a) This chapter applies to any suit against the United States under the Act of March 3, 1925 (commonly referred to as the "Public Vessels Act") (46 U.S.C. App. 781–790) for—

(1) damage caused by a vessel in the naval service; or

(2) compensation for towage or salvage services, including contract salvage, rendered to a vessel in the naval service.

(b) In this chapter, the term "vessel in the naval service" means—

(1) any vessel of the Navy, manned by the Navy, or chartered on bareboat charter to the Navy; or

(2) when the Coast Guard is operating as a service in the Navy, any vessel of the Coast Guard, manned by the Coast Guard, or chartered on bareboat charter to the Coast Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 483; Dec. 12, 1980, P.L. 96–513, § 513(43), 94 Stat. 2935; April 21, 1987, P.L. 100–26, § 7(k)(10), 101 Stat. 284; May 31, 1993, P.L. 103–35, § 201(c)(11), 107 Stat. 98.)

§ 7722. Stay of suit

(a) Whenever in time of war the Secretary of the Navy certifies to a court, or to a judge of a court, in which a suit described in section 7721 of this title is pending, that the prosecution of the suit would tend to endanger the security of naval operations in the war, or would tend to interfere with those operations, all further proceedings in the suit shall be stayed.

(b) A stay under this section does not suspend the issue of process to take or preserve evidence to be used in the trial or prevent the completion of action under similar process issued before the stay.

(Aug. 10, 1956, ch. 1041, 70A Stat. 484.)

§ 7723. Stay of proceedings for preserving evidence after stay of suit

If, at the time of certification under section 7722 of this title, or at any time before the termination of the stay based on the certificate, the Secretary of the Navy files with the court an additional

certificate to the effect that the issue of any process to preserve evidence or the completion of action on process previously issued would tend to endanger the security of the United States or of any of its naval or military operations in the war, or would tend to interfere with those operations, then all proceedings for the taking or preserving of evidence to be used by either party in the trial shall be stayed.

(Aug. 10, 1956, ch. 1041, 70A Stat. 484.)

§ 7724. Stay of proceedings for taking evidence before suit is filed

(a) If in time of war, with respect to any claim against the United States on which a suit described in section 7721 of this title would lie, the Secretary of the Navy certifies to the court, or to a judge of the court, in which proceedings are pending for—

(1) the granting of a dedimus potestatem to take depositions;

(2) a direction to take depositions in perpetuam rei memoriam; or

(3) the taking of depositions or production of evidence pursuant to such dedimus potestatem or direction, or pursuant to any other proceedings for the purpose;

that the proceedings would tend to endanger the security of the United States or any of its naval or military operations in the war, or would tend to interfere with those operations, then the proceedings may not be started or, if they have been started, they shall, when the certificate is filed, be stayed.

(b) The time during which a claimant may file suit of the type described in section 7721 of this title is computed by excluding the time during which a stay under this section or any extension of such a stay is in effect.

(Aug. 10, 1956, ch. 1041, 70A Stat. 484.)

§ 7725. Stay extended or shortened

The Secretary of the Navy, when a stay under this chapter is in effect, may file with the court, or a judge of the court, a certificate extending or shortening the time stated in the prior certificate. The filing of such a new certificate extends or shortens the stay to the period specified in the new certificate or terminates the stay if the new certificate so states.

(Aug. 10, 1956, ch. 1041, 70A Stat. 484.)

§ 7726. Reconsideration of stay

(a) A claimant or party who considers himself adversely affected by a stay under this chapter may serve a written notice on the Secretary of the Navy at Washington, D.C., requesting him to reconsider the stay previously issued and to issue a new certificate. The notice shall identify the stay by means of an attached copy of the certificate of the Secretary or a sufficient description of the stay. The notice may not contain any recital of the facts or circumstances involved.

(b) Within ten days after receiving notice under this section, the Secretary or his designee shall hold a secret meeting at which

the claimant or party, or his representative, may present any facts and arguments he thinks material.

(c) Within ten days after a hearing under this section, the Secretary shall file with the court that ordered the stay a new certificate stating whether the stay is then to be terminated or for what period the stay is to continue in effect. If the Secretary fails to file a new certificate, the court, upon application by the claimant or party, shall issue an order directing the Secretary to file a new certificate within a specified time.

(Aug. 10, 1956, ch. 1041, 70A Stat. 485.)

§ 7727. Duration of stay

A stay of proceedings under this chapter remains in effect for the period specified in the certificate upon which it was based unless the Secretary of the Navy issues a new certificate under section 7725 or 7726 of this title changing the termination date. However, a stay under this chapter may not remain in force longer than six months after the cessation of hostilities.

(Aug. 10, 1956, ch. 1041, 70A Stat. 485.)

§ 7728. Restricted certificate

The Secretary of the Navy may restrict a certificate issued under this chapter so that it stays only the taking of testimony of certain witnesses or the production of evidence on certain subjects. The proceedings not stayed may continue.

(Aug. 10, 1956, ch. 1041, 70A Stat. 485.)

§ 7729. Investigation before issue of certificate

The Secretary of the Navy may not issue a certificate under this chapter until he satisfies himself by investigation that it is necessary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 485.)

§ 7730. Evidence admissible when witness is not available

Whenever the court is satisfied by appropriate evidence or by agreement of counsel that the United States or the claimant is unable after reasonable efforts to secure the testimony of a witness and—

(1) the United States or the claimant has been prevented by a stay under this chapter from examining the witness; or

(2) the United States establishes that it has refrained from bringing a suit or from taking the testimony of the witness in a pending suit to avoid endangering the security of naval operations or interfering with such operations;

the court shall receive in evidence in place of the testimony of the witness—

(1) the affidavit of the witness duly sworn to before a notary public or other authorized officer; or

(2) the statement or testimony of the witness before a court-martial, a court of inquiry, or an investigation; but the use of such statement or testimony does not, in any litigation, make the remainder of the record admissible or compel the United States to produce the remainder of the record.

The court shall give such weight to the affidavit, statement, or testimony as it considers proper under the circumstances.

(Aug. 10, 1956, ch. 1041, 70A Stat. 485.)

CHAPTER 659—NAVAL MILITIA

Sec.
7851. Composition.
7852. Appointment and enlistment in reserve components.
7853. Release from Militia duty upon order to active duty in reserve components.
7854. Availability of material for Naval Militia.

§ 7851. Composition

The Naval Militia consists of the Naval Militia of the States, the Territories, and the District of Columbia.

(Aug. 10, 1956, ch. 1041, 70A Stat. 486.)

§ 7852. Appointment and enlistment in reserve components

In the discretion of the Secretary of the Navy, any member of the Naval Militia may be appointed or enlisted in the Naval Reserve or the Marine Corps Reserve in the grade for which he is qualified.

(Aug. 10, 1956, ch. 1041, 70A Stat. 486.)

§ 7853. Release from Militia duty upon order to active duty in reserve components

When ordered to active duty, a member of the Naval Reserve or the Marine Corps Reserve who is a member of the Naval Militia is relieved from all service and duty in the Naval Militia from the date of active duty specified in his orders until he is released from active duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 486.)

§ 7854. Availability of material for Naval Militia

Under regulations prescribed by the Secretary of the Navy, vessels, material, armament, equipment, and other facilities of the Navy and the Marine Corps available to the Naval Reserve and the Marine Corps Reserve may also be made available for issue or loan to any State, any Territory, or the District of Columbia for the use of its Naval Militia if—

(1) at least 95 percent of the members of the portion or unit of the Naval Militia to which the facilities would be made available are members of the Naval Reserve or the Marine Corps Reserve; and

(2) the organization, administration, and training of the Naval Militia conform to standards prescribed by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 486.)

CHAPTER 661—ACCOUNTABILITY AND RESPONSIBILITY

Sec.
7861. Custody of departmental records and property.
7862. Accounts of paymasters of lost or captured naval vessels.
7863. Disposal of public stores by order of commanding officer.

§ 7861. Custody of departmental records and property

The Secretary of the Navy has custody and charge of all books, records, papers, furniture, fixtures, and other property under the lawful control of the executive part of the Department of the Navy.

(Added P.L. 99–433, § 514(b), Oct. 1, 1986, 100 Stat. 1055 [former § 7861 redesignated § 7862].)

§ 7862. Accounts of paymasters of lost or captured naval vessels

When settling the account of a paymaster of a lost or captured naval vessel, the Comptroller General in settling money accounts, and the Secretary of the Navy in settling property accounts, shall credit the account of the paymaster for the amount of provisions, clothing, small stores, and money for which the paymaster is charged that the Comptroller General or Secretary believes was lost inevitably because of the loss or capture. The paymaster is then free of liability for the provisions, clothing, small stores, and money.

(Added as § 7681, P.L. 97–258, § 2(b)(12)(B), Sept. 13, 1982, 96 Stat. 1057; amended P.L. 97–295, § 1(51)(C), Oct. 12, 1982, 96 Stat. 1300; redesignated § 7862 P.L. 99–433, § 514(b), Oct. 1, 1986, 100 Stat. 1054 [former § 7862 redesignated § 7863].)

§ 7863. Disposal of public stores by order of commanding officer

When settling an account of a disbursing official, the Comptroller General shall allow disposal of public stores the disbursing official made under an order of a commanding officer when presented with satisfactory evidence that the order was made and that the stores were disposed of as the order provided. The commanding officer is accountable for the disposal.

(Added as § 7682, P.L. 97–258, § 2(b)(12)(B), Sept. 13, 1982, 96 Stat. 1057; redesignated § 7863 P.L. 99–433, § 514(b), Oct. 1, 1986, 100 Stat. 1054; amended P.L. 104–106, § 913(c)(3), Feb. 10, 1996, 110 Stat. 411; P.L. 104–201, § 1074(a)(20), Sept. 23, 1996, 110 Stat. 2660.)

CHAPTER 663—NAMES AND INSIGNIA

Sec.
7881. Unauthorized use of Marine Corps insignia.

§ 7881. Unauthorized use of Marine Corps insignia

(a) The seal, emblem, and initials of the United States Marine Corps shall be deemed to be insignia of the United States.

(b) No person may, except with the written permission of the Secretary of the Navy, use or imitate the seal, emblem, name, or initials of the United States Marine Corps in connection with any promotion, goods, services, or commercial activity in a manner reasonably tending to suggest that such use is approved, endorsed, or authorized by the Marine Corps or any other component of the Department of Defense.

(c) Whenever it appears to the Attorney General of the United States that any person is engaged or is about to engage in an act or practice which constitutes or will constitute conduct prohibited by subsection (b), the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such act or practice. Such court may, at any time before final determination, enter such restraining orders or prohibitions, or take such other action as is warranted, to prevent injury to the United States or to any person or class of persons for whose protection the action is bought.

(Added P.L. 98–525, § 1532, Oct. 19, 1984, 98 Stat. 2631.)

CHAPTER 665—NATIONAL OCEANOGRAPHIC PARTNERSHIP PROGRAM

Sec.
7901. National Oceanographic Partnership Program.
7902. National Ocean Research Leadership Council.
7903. Ocean Research Advisory Panel.

§ 7901. National Oceanographic Partnership Program

(a) ESTABLISHMENT.—The Secretary of the Navy shall establish a program to be known as the "National Oceanographic Partnership Program".

(b) PURPOSES.—The purposes of the program are as follows:

(1) To promote the national goals of assuring national security, advancing economic development, protecting quality of life, and strengthening science education and communication through improved knowledge of the ocean.

(2) To coordinate and strengthen oceanographic efforts in support of those goals by—

(A) identifying and carrying out partnerships among Federal agencies, academia, industry, and other members of the oceanographic scientific community in the areas of data, resources, education, and communication; and

(B) reporting annually to Congress on the program.

(Added P.L. 104–201, § 282(a)(1), Sept. 23, 1996, 110 Stat. 2470.)

§ 7902. National Ocean Research Leadership Council

(a) COUNCIL.—There is a National Ocean Research Leadership Council (hereinafter in this chapter referred to as the "Council").

(b) MEMBERSHIP.—The Council is composed of the following members:

(1) The Secretary of the Navy.

(2) The Administrator of the National Oceanic and Atmospheric Administration.

(3) The Director of the National Science Foundation.

(4) The Administrator of the National Aeronautics and Space Administration.

(5) The Deputy Secretary of Energy.

(6) The Administrator of the Environmental Protection Agency.

(7) The Commandant of the Coast Guard.

(8) The Director of the United States Geological Survey of the Department of the Interior.

(9) The Director of the Defense Advanced Research Projects Agency.

(10) The Director of the Minerals Management Service of the Department of the Interior.

(11) The Director of the Office of Science and Technology.

(12) The Director of the Office of Management and Budget.

(c) CHAIRMAN AND VICE CHAIRMAN.—(1) Except as provided in paragraph (2), the chairman and vice chairman of the Council shall be appointed every two years by a selection committee of the Council composed of, at a minimum, the Secretary of the Navy, the Administrator of the National Oceanic and Atmospheric Administration, and the Director of the National Science Foundation. The term of office of the chairman and vice chairman shall be two years. A person who has previously served as chairman or vice chairman may be reappointed.

(2) The first chairman of the Council shall be the Secretary of the Navy. The first vice chairman of the Council shall be the Administrator of the National Oceanic and Atmospheric Administration.

(d) RESPONSIBILITIES.—The Council shall have the following responsibilities:

(1) To prescribe policies and procedures to implement the National Oceanographic Partnership Program.

(2) To review, select, and identify and allocate funds for partnership projects for implementation under the program, based on the following criteria:

(A) Whether the project addresses critical research objectives or operational goals, such as data accessibility and quality assurance, sharing of resources, education, or communication.

(B) Whether the project has, or is designed to have, broad participation within the oceanographic community.

(C) Whether the partners have a long-term commitment to the objectives of the project.

(D) Whether the resources supporting the project are shared among the partners.

(E) Whether the project has been subjected to adequate peer review.

(3) To assess whether there is a need for a facility (or facilities) to provide national centralization of oceanographic data, and to establish such a facility or facilities if determined necessary. In conducting the assessment, the Council shall review, at a minimum, the following:

(A) The need for a national oceanographic data center.

(B) The need for a national coastal data center.

(C) Accessibility by potential users of such centers.

(D) Preexisting facilities and expertise.

(e) ANNUAL REPORT.—Not later than March 1 of each year, the Council shall submit to Congress a report on the National Oceanographic Partnership Program. The report shall contain the following:

(1) A description of activities of the program carried out during the fiscal year before the fiscal year in which the report is prepared, together with a list of the members of the Ocean Research Advisory Panel and any working groups in existence during the fiscal year covered.

(2) A general outline of the activities planned for the program during the fiscal year in which the report is prepared.

(3) 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.

(4) A description of the involvement of the program with Federal interagency coordinating entities.

(5) The amounts requested, in the budget submitted to Congress pursuant to section 1105(a) of title 31 for the fiscal year following the fiscal year in which the report is prepared, for the programs, projects, and activities of the program and the estimated expenditures under such programs, projects, and activities during such following fiscal year.

(f) PARTNERSHIP PROGRAM OFFICE.—(1) The Council shall establish a partnership program office for the National Oceanographic Partnership Program. The Council shall use competitive procedures in selecting an operator for the partnership program office.

(2) The Council shall assign the following duties to the partnership program office:

(A) To establish and oversee working groups to propose partnership projects to the Council and advise the Council on such projects.

(B) To manage the process for proposing partnership projects to the Council, including managing peer review of such projects.

(C) To submit to the Council an annual report on the status of all partnership projects and activities of the office.

(D) Any additional duties for the administration of the National Oceanographic Partnership Program that the Council considers appropriate.

(3) The Council shall supervise the performance of duties by the partnership program office.

(g) CONTRACT AND GRANT AUTHORITY.—The Council may authorize one or more of the departments or agencies represented on the Council to enter into contracts and make grants, using funds appropriated pursuant to an authorization of appropriations for the National Oceanographic Partnership Program, for the purpose of implementing the program and carrying out the responsibilities of the Council.

(h) ESTABLISHMENT AND FORMS OF PARTNERSHIP PROJECTS.—(1) A partnership project under the National Oceanographic Partnership Program may be established by any instrument that the Council considers appropriate, including a memorandum of understanding, a cooperative research and development agreement, and any similar instrument.

(2) Projects under the program may include demonstration projects.

(Added P.L. 104–201, § 282(a)(1), Sept. 23, 1996, 110 Stat. 2470; amended P.L. 105–85, §§ 241(a), 1073(a)(64), Nov. 18, 1997, 111 Stat. 1665, 1903; P.L. 106–65, § 1066(a)(30), Oct. 5, 1999, 113 Stat. 772.)

§ 7903. Ocean Research Advisory Panel

(a) ESTABLISHMENT.—The Council shall establish an Ocean Research Advisory Panel consisting of not less than 10 and not more

than 18 members appointed by the chairman, including the following:

(1) One member who will represent the National Academy of Sciences.

(2) One member who will represent the National Academy of Engineering.

(3) One member who will represent the Institute of Medicine.

(4) Members selected from among individuals who will represent the views of ocean industries, State governments, academia, and such other views as the chairman considers appropriate.

(5) Members selected from among individuals eminent in the fields of marine science or marine policy, or related fields.

(b) RESPONSIBILITIES.—The Council shall assign the following responsibilities to the Advisory Panel:

(1) To advise the Council on policies and procedures to implement the National Oceanographic Partnership Program.

(2) To advise the Council on selection of partnership projects and allocation of funds for partnership projects for implementation under the program.

(3) To advise the Council on matters relating to national oceanographic data requirements.

(4) Any additional responsibilities that the Council considers appropriate.

(c) FUNDING.—The Secretary of the Navy annually shall make funds available to support the activities of the Advisory Panel.

(Added P.L. 104–201, § 282(a)(1), Sept. 23, 1996, 110 Stat. 2470; amended P.L. 105–85, § 241(b)(1), Nov. 18, 1997, 111 Stat. 1666.)

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CHAPTER 801—DEFINITIONS

[No present sections.]

CHAPTER 803—DEPARTMENT OF THE AIR FORCE

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8011. Organization.
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§ 8011. Organization

The Department of the Air Force is separately organized under the Secretary of the Air Force. It operates under the authority, direction, and control of the Secretary of Defense.

(Added as § 8010 P.L. 87–651, § 213(a), Sept. 7, 1962, 76 Stat. 524; redesignated § 8011 P.L. 99–433, § 521(a)(1), Oct. 1, 1986, 100 Stat. 1055 [former § 8011 redesignated § 8012].)

§ 8012. Department of the Air Force: seal

The Secretary of the Air Force shall have a seal for the Department of the Air Force. The design of the seal must be approved by the President. Judicial notice shall be taken of the seal.

(Aug. 10, 1956, § 8011, ch. 1041, 70A Stat. 488; redesignated § 8012, P.L. 99–433, § 521(a)(1), Oct. 1, 1986, 100 Stat. 1055 [former § 8012 redesignated § 8013].)

§ 8013. Secretary of the Air Force

(a)(1) There is a Secretary of the Air Force, appointed from civilian life by the President, by and with the advice and consent of the Senate. The Secretary is the head of the Department of the Air Force.

(2) A person may not be appointed as Secretary of the Air Force within five years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) Subject to the authority, direction, and control of the Secretary of Defense and subject to the provisions of chapter 6 of this title, the Secretary of the Air Force is responsible for, and has the authority necessary to conduct, all affairs of the Department of the Air Force, including the following functions:

(1) Recruiting.
(2) Organizing.
(3) Supplying.

(4) Equipping (including research and development).

(5) Training.

(6) Servicing.

(7) Mobilizing.

(8) Demobilizing.

(9) Administering (including the morale and welfare of personnel).

(10) Maintaining.

(11) The construction, outfitting, and repair of military equipment.

(12) The construction, maintenance, and repair of buildings, structures, and utilities and the acquisition of real property and interests in real property necessary to carry out the responsibilities specified in this section.

(c) Subject to the authority, direction, and control of the Secretary of Defense, the Secretary of the Air Force is also responsible to the Secretary of Defense for—

(1) the functioning and efficiency of the Department of the Air Force;

(2) the formulation of policies and programs by the Department of the Air Force that are fully consistent with national security objectives and policies established by the President or the Secretary of Defense;

(3) the effective and timely implementation of policy, program, and budget decisions and instructions of the President or the Secretary of Defense relating to the functions of the Department of the Air Force;

(4) carrying out the functions of the Department of the Air Force so as to fulfill (to the maximum extent practicable) the current and future operational requirements of the unified and specified combatant commands;

(5) effective cooperation and coordination between the Department of the Air Force and the other military departments and agencies of the Department of Defense to provide for more effective, efficient, and economical administration and to eliminate duplication;

(6) the presentation and justification of the positions of the Department of the Air Force on the plans, programs, and policies of the Department of Defense; and

(7) the effective supervision and control of the intelligence activities of the Department of the Air Force.

(d) The Secretary of the Air Force is also responsible for such other activities as may be prescribed by law or by the President or Secretary of Defense.

(e) After first informing the Secretary of Defense, the Secretary of the Air Force may make such recommendations to Congress relating to the Department of Defense as he considers appropriate.

(f) The Secretary of the Air Force may assign such of his functions, powers, and duties as he considers appropriate to the Under Secretary of the Air Force and to the Assistant Secretaries of the Air Force. Officers of the Air Force shall, as directed by the Secretary, report on any matter to the Secretary, the Under Secretary, or any Assistant Secretary.

(g) The Secretary of the Air Force may—

(1) assign, detail, and prescribe the duties of members of the Air Force and civilian personnel of the Department of the Air Force;

(2) change the title of any officer or activity of the Department of the Air Force not prescribed by law; and

(3) prescribe regulations to carry out his functions, powers, and duties under this title.

(Aug. 10, 1956, § 8012, ch. 1041, 70A Stat. 489, [amended several times]; redesignated § 8013 and revised completely P.L. 99–433, § 521(a) (1), (3), Oct. 1, 1986, 100 Stat. 1055 (former § 8013 now covered by §§ 8015, 8016); amended P.L. 99–661, § 534, Nov. 14, 1986, 100 Stat. 3873.)

§ 8014. Office of the Secretary of the Air Force

(a) There is in the Department of the Air Force an Office of the Secretary of the Air Force. The function of the Office is to assist the Secretary of the Air Force in carrying out his responsibilities.

(b) The Office of the Secretary of the Air Force is composed of the following:

(1) The Under Secretary of the Air Force.

(2) The Assistant Secretaries of the Air Force.

(3) The General Counsel of the Department of the Air Force.

(4) The Inspector General of the Air Force.

(5) The Air Reserve Forces Policy Committee.

(6) Such other offices and officials as may be established by law or as the Secretary of the Air Force may establish or designate.

(c)(1) The Office of the Secretary of the Air Force shall have sole responsibility within the Office of the Secretary and the Air Staff for the following functions:

(A) Acquisition.

(B) Auditing.

(C) Comptroller (including financial management).

(D) Information management.

(E) Inspector General.

(F) Legislative affairs.

(G) Public affairs.

(2) The Secretary of the Air Force shall establish or designate a single office or other entity within the Office of the Secretary of the Air Force to conduct each function specified in paragraph (1). No office or other entity may be established or designated within the Air Staff to conduct any of the functions specified in paragraph (1).

(3) The Secretary shall prescribe the relationship of each office or other entity established or designated under paragraph (2) to the Chief of Staff and to the Air Staff and shall ensure that each such office or entity provides the Chief of Staff such staff support as the Chief of Staff considers necessary to perform his duties and responsibilities.

(4) The vesting in the Office of the Secretary of the Air Force of the responsibility for the conduct of a function specified in paragraph (1) does not preclude other elements of the executive part of the Department of the Air Force (including the Air Staff) from providing advice or assistance to the Chief of Staff or otherwise participating in that function within the executive part of the Depart-

ment under the direction of the office assigned responsibility for that function in the Office of the Secretary of the Air Force.

(d)(1) Subject to paragraph (2), the Office of the Secretary of the Air Force shall have sole responsibility within the Office of the Secretary and the Air Staff for the function of research and development.

(2) The Secretary of the Air Force may assign to the Air Staff responsibility for those aspects of the function of research and development that relate to military requirements and test and evaluation.

(3) The Secretary shall establish or designate a single office or other entity within the Office of the Secretary of the Air Force to conduct the function specified in paragraph (1).

(4) The Secretary shall prescribe the relationship of the office or other entity established or designated under paragraph (3) to the Chief of Staff of the Air Force and to the Air Staff and shall ensure that each such office or entity provides the Chief of Staff such staff support as the Chief of Staff considers necessary to perform his duties and responsibilities.

(e) The Secretary of the Air Force shall ensure that the Office of the Secretary of the Air Force and the Air Staff do not duplicate specific functions for which the Secretary has assigned responsibility to the other.

(f)(1) The total number of members of the armed forces and civilian employees of the Department of the Air Force assigned or detailed to permanent duty in the Office of the Secretary of the Air Force and on the Air Staff may not exceed 2,639.

(2) Not more than 1,585 officers of the Air Force on the active-duty list may be assigned or detailed to permanent duty in the Office of the Secretary of the Air Force and on the Air Staff.

(3) The total number of general officers assigned or detailed to permanent duty in the Office of the Secretary of the Air Force and on the Air Staff may not exceed the number equal to 85 percent of the number of general officers assigned or detailed to such duty on the date of the enactment of this subsection.

(4) The limitations in paragraphs (1), (2), and (3) do not apply in time of war or during a national emergency declared by the President or Congress. The limitation in paragraph (2) does not apply whenever the President determines that it is in the national interest to increase the number of officers assigned or detailed to permanent duty in the Office of the Secretary of the Air Force or on the Air Staff.

(Added P.L. 99–433, § 521(a)(3), Oct. 1, 1986, 100 Stat. 1057; amended P.L. 100–180, § 1314(b)(7), Dec. 4, 1987, 101 Stat. 1175; P.L. 100–456, § 325(c), Sept. 29, 1988, 102 Stat. 1955; P.L. 101–189, § 652(a)(4), Nov. 29, 1989, 103 Stat. 1461.)

§ 8015. Under Secretary of the Air Force

(a) There is an Under Secretary of the Air Force, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The Under Secretary shall perform such duties and exercise such powers as the Secretary of the Air Force may prescribe.

(Added P.L. 99–433, § 521(a)(1), (3) Oct. 1, 1986, 100 Stat. 1058 [formerly covered by § 8013].)

§ 8016. Assistant Secretaries of the Air Force

(a) There are four Assistant Secretaries of the Air Force. They shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b)(1) The Assistant Secretaries shall perform such duties and exercise such powers as the Secretary of the Air Force may prescribe.

(2) One of the Assistant Secretaries shall be the Assistant Secretary of the Air Force for Manpower and Reserve Affairs. He shall have as his principal duty the overall supervision of manpower and reserve component affairs of the Department of the Air Force.

(3) One of the Assistant Secretaries shall be the Assistant Secretary of the Air Force for Financial Management. The Assistant Secretary shall have as his principal responsibility the exercise of the comptroller functions of the Department of the Air Force, including financial management functions. The Assistant Secretary shall be responsible for all financial management activities and operations of the Department of the Air Force and shall advise the Secretary of the Air Force on financial management.

(Added P.L. 99–433, § 521(a)(3), Oct. 1, 1986, 100 Stat. 1058; amended P.L. 100–456, § 702(c)(1), (d), Sept. 29, 1988, 102 Stat. 1995 [formerly covered by § 8013].)

§ 8017. Secretary of the Air Force: successors to duties

If the Secretary of the Air Force dies, resigns, is removed from office, is absent, or is disabled, the person who is highest on the following list, and who is not absent or disabled, shall perform the duties of the Secretary until the President, under section 3347 of title 5, directs another person to perform those duties or until the absence or disability ceases:

(1) The Under Secretary of the Air Force.

(2) The Assistant Secretaries of the Air Force, in the order prescribed by the Secretary of the Air Force and approved by the Secretary of Defense.

(3) The General Counsel of the Department of the Air Force.

(4) The Chief of Staff.

(Aug. 10, 1956, ch. 1041, 70A Stat. 489; Nov. 2, 1966, P.L. 89–718, § 23, 80 Stat. 1118; Jan. 2, 1968, P.L. 90–235, § 4(a)(9), 81 Stat. 760; Oct. 1, 1986, P.L. 99–433, § 521(a)(4), 100 Stat. 1058; Oct. 5, 1994, P.L. 103–337, § 902(c), 108 Stat. 2823.)

§ 8018. Administrative Assistant

The Secretary of the Air Force may appoint an Administrative Assistant in the Office of the Secretary of the Air Force. The Administrative Assistant shall perform such duties as the Secretary may prescribe.

(Added P.L. 99–433, § 521(a)(5), Oct. 1, 1986, 100 Stat. 1059 [former § 8018 repealed P.L. 88–426, § 305(40)(A), Aug. 14, 1964].)

§ 8019. General Counsel

(a) There is a General Counsel of the Department of the Air Force, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The General Counsel shall perform such functions as the Secretary of the Air Force may prescribe.

(Added P.L. 99–433, § 521(a)(5), Oct. 1, 1986, 100 Stat. 1059; amended P.L. 100–456, § 703(a), Sept. 29, 1988, 102 Stat. 1996 [former § 8019 transferred and redesignated as § 8038].)

§ 8020. Inspector General

(a) There is an Inspector General of the Air Force who shall be detailed to such position by the Secretary of the Air Force from the general officers of the Air Force. An officer may not be detailed to such position for a tour of duty of more than four years, except that the Secretary may extend such a tour of duty if he makes a special finding that the extension is necessary in the public interest.

(b) When directed by the Secretary or the Chief of Staff, the Inspector General shall—

(1) inquire into and report upon the discipline, efficiency, and economy of the Air Force; and

(2) perform any other duties prescribed by the Secretary or the Chief of Staff.

(c) The Inspector General shall periodically propose programs of inspections to the Secretary of the Air Force and shall recommend additional inspections and investigations as may appear appropriate.

(d) The Inspector General shall cooperate fully with the Inspector General of the Department of Defense in connection with the performance of any duty or function by the Inspector General of the Department of Defense under the Inspector General Act of 1978 (5 U.S.C. App. 3) regarding the Department of the Air Force.

(e) The Inspector General shall have such deputies and assistants as the Secretary of the Air Force may prescribe. Each such deputy and assistant shall be an officer detailed by the Secretary to that position from the officers of the Air Force for a tour of duty of not more than four years, under a procedure prescribed by the Secretary.

(Added P.L. 99–433, § 521(a)(5), Oct. 1, 1986, 100 Stat. 1059.)

§ 8021. Air Force Reserve Forces Policy Committee

There is in the Office of the Secretary of the Air Force an Air Force Reserve Forces Policy Committee. The functions, membership, and organization of that committee are set forth in section 10305 of this title.

(Added P.L. 103–337, § 1661(b)(4)(B), Oct. 5, 1994, 108 Stat. 2982 [Former § 8021 transferred to § 10305].)

§ 8022. Financial management

(a) The Secretary of the Air Force shall provide that the Assistant Secretary of the Air Force for Financial Management shall direct and manage financial management activities and operations of the Department of the Air Force, including ensuring that financial management systems of the Department of the Air Force comply with subsection (b). The authority of the Assistant Secretary for such direction and management shall include the authority to—

(1) supervise and direct the preparation of budget estimates of the Department of the Air Force and otherwise carry

out, with respect to the Department of the Air Force, the functions specified for the Under Secretary of Defense (Comptroller) in section 135(c) of this title;

(2) approve and supervise any project to design or enhance a financial management system for the Department of the Air Force; and

(3) approve the establishment and supervise the operation of any asset management system of the Department of the Air Force, including—

(A) systems for cash management, credit management, and debt collection; and

(B) systems for the accounting for the quantity, location, and cost of property and inventory.

(b)(1) Financial management systems of the Department of the Air Force (including accounting systems, internal control systems, and financial reporting systems) shall be established and maintained in conformance with—

(A) the accounting and financial reporting principles, standards, and requirements established by the Comptroller General under section 3511 of title 31; and

(B) the internal control standards established by the Comptroller General under section 3512 of title 31.

(2) Such systems shall provide for—

(A) complete, reliable, consistent, and timely information which is prepared on a uniform basis and which is responsive to the financial information needs of department management;

(B) the development and reporting of cost information;

(C) the integration of accounting and budgeting information; and

(D) the systematic measurement of performance.

(c) The Assistant Secretary shall maintain a five-year plan describing the activities the Department of the Air Force proposes to conduct over the next five fiscal years to improve financial management. Such plan shall be revised annually.

(d) The Assistant Secretary of the Air Force for Financial Management shall transmit to the Secretary of the Air Force a report each year on the activities of the Assistant Secretary during the preceding year. Each such report shall include a description and analysis of the status of Department of the Air Force financial management.

(Added P.L. 100–456, § 702(c)(2), Sept. 29, 1988, 102 Stat. 1995; amended P.L. 103–337, § 1070(a)(15), Oct. 5, 1994, 108 Stat. 2856; P.L. 104–106, § 1503(b)(1), Feb. 10, 1996, 110 Stat. 512.)

CHAPTER 805—THE AIR STAFF

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§ 8031. The Air Staff: function; composition

(a) There is in the executive part of the Department of the Air Force an Air Staff. The function of the Air Staff is to assist the Secretary of the Air Force in carrying out his responsibilities.

(b) The Air Staff is composed of the following:

(1) The Chief of Staff.

(2) The Vice Chief of Staff.

(3) The Deputy Chiefs of Staff.

(4) The Assistant Chiefs of Staff.

(5) The Surgeon General of the Air Force.

(6) The Judge Advocate General of the Air Force.

(7) The Chief of the Air Force Reserve.

(8) Other members of the Air Force assigned or detailed to the Air Staff.

(9) Civilian employees in the Department of the Air Force assigned or detailed to the Air Staff.

(c) Except as otherwise specifically prescribed by law, the Air Staff shall be organized in such manner, and its members shall perform such duties and have such titles, as the Secretary may prescribe.

(Aug. 10, 1956, ch. 1041, 70A Stat. 490; Nov. 2, 1966, P.L. 89–718, § 45, 80 Stat. 1121; Jan. 2, 1975, P.L. 93–608, § 1(5), 88 Stat. 1968; Oct. 19, 1984, P.L. 98–525, § 515, 98 Stat. 2522; revised in its entirety P.L. 99–433, § 522(a), Oct. 1, 1986, 100 Stat. 1060.)

§ 8032. The Air Staff: general duties

(a) The Air Staff shall furnish professional assistance to the Secretary, the Under Secretary, and the Assistant Secretaries of the Air Force, and the Chief of Staff of the Air Force.

(b) Under the authority, direction, and control of the Secretary of the Air Force, the Air Staff shall—

(1) Subject to subsections (c) and (d) of section 8014 of this title, prepare for such employment of the Air Force, and for such recruiting, organizing, supplying, equipping, (including those aspects of research and development assigned by the Secretary of the Air Force), training, servicing, mobilizing, demobilizing, administering, and maintaining of the Air Force, as will

assist in the execution of any power, duty, or function of the Secretary or the Chief of Staff;

(2) investigate and report upon the efficiency of the Air Force and its preparation to support military operations by combatant commands;

(3) prepare detailed instructions for the execution of approved plans and supervise the execution of those plans and instructions;

(4) as directed by the Secretary or the Chief of Staff, coordinate the actions of organizations of the Air Force; and

(5) perform such other duties, not otherwise assigned by law, as may be prescribed by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 490; Aug. 6, 1958, P.L. 85–599, § 4(h), 72 Stat. 517; Oct. 1, 1986, P.L. 99–433, § 522(b), 100 Stat. 1060.)

§ 8033. Chief of Staff

(a)(1) There is a Chief of Staff of the Air Force, appointed for a period of four years by the President, by and with the advice and consent of the Senate, from the general officers of the Air Force. He serves at the pleasure of the President. In time of war or during a national emergency declared by Congress, he may be reappointed for a term of not more than four years.

(2) The President may appoint an officer as Chief of Staff only if—

(A) the officer has had significant experience in joint duty assignments; and

(B) such experience includes at least one full tour of duty in a joint duty assignment (as defined in section 664(f) of this title) as a general officer.

(3) The President may waive paragraph (2) in the case of an officer if the President determines such action is necessary in the national interest.

(b) The Chief of Staff, while so serving, has the grade of general without vacating his permanent grade.

(c) Except as otherwise prescribed by law and subject to section 8013(f) of this title, the Chief of Staff performs his duties under the authority, direction, and control of the Secretary of the Air Force and is directly responsible to the Secretary.

(d) Subject to the authority, direction, and control of the Secretary of the Air Force, the Chief of Staff shall—

(1) preside over the Air Staff;

(2) transmit the plans and recommendations of the Air Staff to the Secretary and advise the Secretary with regard to such plans and recommendations;

(3) after approval of the plans or recommendations of the Air Staff by the Secretary, act as the agent of the Secretary in carrying them into effect;

(4) exercise supervision, consistent with the authority assigned to commanders of unified or specified combatant commands under chapter 6 of this title, over such of the members and organizations of the Air Force as the Secretary determines;

(5) perform the duties prescribed for him by section 171 of this title and other provisions of law; and

(6) perform such other military duties, not otherwise assigned by law, as are assigned to him by the President, the Secretary of Defense, or the Secretary of the Air Force.

(e)(1) The Chief of Staff shall also perform the duties prescribed for him as a member of the Joint Chiefs of Staff under section 151 of this title.

(2) To the extent that such action does not impair the independence of the Chief of Staff in the performance of his duties as a member of the Joint Chiefs of Staff, the Chief of Staff shall inform the Secretary regarding military advice rendered by members of the Joint Chiefs of Staff on matters affecting the Department of the Air Force.

(3) Subject to the authority, direction, and control of the Secretary of Defense, the Chief of Staff shall keep the Secretary of the Air Force fully informed of significant military operations affecting the duties and responsibilities of the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 492, § 8034; Aug. 6, 1958, P.L. 85–599, § 4(d), (e), 72 Stat. 517; Sept. 7, 1962, P.L. 87–651, § 114, 76 Stat. 513; June 5, 1967, P.L. 90–22, § 403, 81 Stat. 53; Dec. 12, 1980, P.L. 96–513, § 504(2), 94 Stat. 2915; July 10, 1981, P.L. 97–22, § 10(b)(9), 95 Stat. 137; redesignated § 8033 and revised in its entirety P.L. 99–433, § 522(c), Oct. 1, 1986, 100 Stat. 1061 [former § 8033 transferred and redesignated § 8021]; amended P.L. 100–456, § 519(a)(3) Sept. 29, 1988, 102 Stat. 1972.)

§ 8034. Vice Chief of Staff

(a) There is a Vice Chief of Staff of the Air Force, appointed by the President, by and with the advice and consent of the Senate, from the general officers of the Air Force.

(b) The Vice Chief of Staff of the Air Force, while so serving, has the grade of general without vacating his permanent grade.

(c) The Vice Chief of Staff has such authority and duties with respect to the Department of the Air Force as the Chief of Staff, with the approval of the Secretary of the Air Force, may delegate to or prescribe for him. Orders issued by the Vice Chief of Staff in performing such duties have the same effect as those issued by the Chief of Staff.

(d) When there is a vacancy in the office of Chief of Staff or during the absence or disability of the Chief of Staff—

(1) the Vice Chief of Staff shall perform the duties of the Chief of Staff until a successor is appointed or the absence or disability ceases; or

(2) if there is a vacancy in the office of the Vice Chief of Staff or the Vice Chief of Staff is absent or disabled, unless the President directs otherwise, the most senior officer of the Air Force in the Air Staff who is not absent or disabled and who is not restricted in performance of duty shall perform the duties of the Chief of Staff until a successor to the Chief of Staff or the Vice Chief of Staff is appointed or until the absence or disability of the Chief of Staff or Vice Chief of Staff ceases, whichever occurs first.

(Aug. 10, 1956, ch. 1041, 70A Stat. 492, § 8035; Aug. 6, 1958, P.L. 85–599, § 6(d), 72 Stat. 519; redesignated § 8034 and amended Oct. 1, 1986, P.L. 99–433, § 522(d), 100 Stat. 1062 [former § 8034 redesignated § 8033].)

§ 8035. Deputy Chiefs of Staff and Assistant Chiefs of Staff

(a) The Deputy Chiefs of Staff and the Assistant Chiefs of Staff shall be general officers detailed to those positions.

(b) The number of Deputy Chiefs of Staff and Assistant Chiefs of Staff shall be prescribed by the Secretary, except that—

(1) there may not be more than five Deputy Chiefs of Staff; and

(2) there may not be more than three Assistant Chiefs of Staff.

(Added P.L. 99–433, § 522(e), Oct. 1, 1986, 100 Stat. 1062 [former § 8035 redesignated § 8034].)

§ 8036. Surgeon General: appointment; grade

There is a Surgeon General of the Air Force who is appointed by the President by and with the advice and consent of the Senate from officers of the Air Force who are in the Air Force medical department. The Surgeon General, while so serving, has the grade of lieutenant general.

(Added P.L. 89–288, § 5(a), Oct. 22, 1965, 79 Stat. 1050; amended P.L. 99–433, § 522(g)(2), Oct. 1, 1986, 100 Stat. 1063; P.L. 104–106, § 506(c), Feb. 10, 1996, 110 Stat. 296.)

§ 8037. Judge Advocate General, Deputy Judge Advocate General: appointment; duties

(a) There is a Judge Advocate General in the Air Force, who is appointed by the President, by and with the advice and consent of the Senate, from officers of the Air Force. The term of office is four years, but may be sooner terminated or extended by the President. An appointee who holds a lower regular grade shall be appointed in the regular grade of major general.

(b) The Judge Advocate General of the Air Force shall be appointed from those officers who at the time of appointment are members of the bar of a Federal court or the highest court of a State or Territory, and who have had at least eight years of experience in legal duties as commissioned officers.

(c) The Judge Advocate General shall, in addition to other duties prescribed by law—

(1) receive, revise, and have recorded the proceedings of courts of inquiry and military commissions; and

(2) perform such other legal duties as may be directed by the Secretary of the Air Force.

(d)(1) There is a Deputy Judge Advocate General in the Air Force, who is appointed by the President, by and with the advice and consent of the Senate, from officers of the Air Force who have the qualifications prescribed in subsection (b) for the Judge Advocate General. The term of office of the Deputy Judge Advocate General is four years, but may be sooner terminated or extended by the President. An officer appointed as Deputy Judge Advocate General who holds a lower regular grade shall be appointed in the regular grade of major general.

(2) When there is a vacancy in the office of the Judge Advocate General, or during the absence or disability of the Judge Advocate General, the Deputy Judge Advocate General shall perform the duties of the Judge Advocate General until a successor is appointed or the absence or disability ceases.

(3) When paragraph (2) cannot be complied with because of the absence or disability of the Deputy Judge Advocate General, the heads of the major divisions of the Office of the Judge Advocate General, in the order directed by the Secretary of the Air Force,

shall perform the duties of the Judge Advocate General, unless otherwise directed by the President.

(e) Under regulations prescribed by the Secretary of Defense, the Secretary of the Air Force, in selecting an officer for recommendation to the President under subsection (a) for appointment as the Judge Advocate General or under subsection (d) for appointment as the Deputy Judge Advocate General, shall ensure that the officer selected is recommended by a board of officers that, insofar as practicable, is subject to the procedures applicable to selection boards convened under chapter 36 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 495, § 8072; Sept. 8, 1980, P.L. 96–343, § 12(a), (b)(1), 94 Stat. 1130, 1131; transferred and redesignated § 8037 Oct. 1, 1986, P.L. 99–433, § 522(f), 100 Stat. 1063; Oct. 5, 1994, P.L. 103–337, § 504(c), 108 Stat. 2751; P.L. 104–106, § 507(a), Feb. 10, 1996, 110 Stat. 296.)

§ 8038. Office of Air Force Reserve: appointment of Chief

(a) There is in the executive part of the Department of the Air Force an Office of Air Force Reserve which is headed by a chief who is the adviser to the Chief of Staff on Air Force Reserve matters.

(b) APPOINTMENT.—(1) The President, by and with the advice and consent of the Senate, shall appoint the Chief of Air Force Reserve from general officers of the Air Force Reserve who have had at least 10 years of commissioned service in the Air Force.

(2) The Secretary of Defense may not recommend an officer to the President for appointment as Chief of Air Force Reserve unless the officer—

(A) is recommended by the Secretary of the Air Force; and

(B) is determined by the Chairman of the Joint Chiefs of Staff, in accordance with criteria and as a result of a process established by the Chairman, to have significant joint duty experience.

(3) An officer on active duty for service as the Chief of Air Force Reserve shall be counted for purposes of the grade limitations under sections 525 and 526 of this title.

(4) Until October 1, 2003, the Secretary of Defense may waive subparagraph (B) of paragraph (2) with respect to the appointment of an officer as Chief of Air Force Reserve if the Secretary of the Air Force requests the waiver and, in the judgment of the Secretary of Defense—

(A) the officer is qualified for service in the position; and

(B) the waiver is necessary for the good of the service.

Any such waiver shall be made on a case-by-case basis.

(c) TERM; REAPPOINTMENT; GRADE.—(1) The Chief of Air Force Reserve is appointed for a period of four years, but may be removed for cause at any time. An officer serving as Chief of Air Force Reserve may be reappointed for one additional four-year period.

(2) The Chief of Air Force Reserve, while so serving, holds the grade of lieutenant general.

(d) BUDGET.—The Chief of Air Force Reserve is the official within the executive part of the Department of the Air Force who, subject to the authority, direction, and control of the Secretary of the Air Force and the Chief of Staff, is responsible for preparation, justification, and execution of the personnel, operation and maintenance, and construction budgets for the Air Force Reserve. As such,

the Chief of Air Force Reserve is the director and functional manager of appropriations made for the Air Force Reserve in those areas.

(e) FULL TIME SUPPORT PROGRAM.—The Chief of Air Force Reserve manages, with respect to the Air Force Reserve, the personnel program of the Department of Defense known as the Full Time Support Program.

(f) ANNUAL REPORT.—(1) The Chief of Air Force Reserve shall submit to the Secretary of Defense, through the Secretary of the Air Force, an annual report on the state of the Air Force Reserve and the ability of the Air Force Reserve to meet its missions. The report shall be prepared in conjunction with the Chief of Staff of the Air Force and may be submitted in classified and unclassified versions.

(2) The Secretary of Defense shall transmit the annual report of the Chief of Air Force Reserve under paragraph (1) to Congress, together with such comments on the report as the Secretary considers appropriate. The report shall be transmitted at the same time each year that the annual report of the Secretary under section 113 of this title is submitted to Congress.

(Added as § 8019 P.L. 90–168, § 2(19), Dec. 1, 1967, 81 Stat. 524; transferred, redesignated § 8038, and amended P.L. 99–433, §§ 521(a)(2), 522(g)(3), Oct. 1, 1986, 100 Stat. 1055, 1063; amended P.L. 103–337, § 1674(c)(1), Oct. 5, 1994, 108 Stat. 3016; P.L. 104–201, § 1212(d), Sept. 23, 1996, 110 Stat. 2693; P.L. 105–85, § 1073(a)(65), Nov. 18, 1997, 111 Stat. 1904; P.L. 106–65, § 554(e), Oct. 5, 1999, 113 Stat. 617; P.L. 106–398, § 1[507(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–104.)

CHAPTER 807—THE AIR FORCE

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§ 8061. Regulations

The President may prescribe regulations for the government of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 493.)

§ 8062. Policy; composition; aircraft authorization

(a) It is the intent of Congress to provide an Air Force that is capable, in conjunction with the other armed forces, of—

(1) preserving the peace and security, and providing for the defense, of the United States, the Territories, Commonwealths, and possessions, and any areas occupied by the United States;

(2) supporting the national policies;

(3) implementing the national objectives; and

(4) overcoming any nations responsible for aggressive acts that imperil the peace and security of the United States.

(b) There is a United States Air Force within the Department of the Air Force.

(c) In general, the Air Force includes aviation forces both combat and service not otherwise assigned. It shall be organized, trained, and equipped primarily for prompt and sustained offensive and defensive air operations. It is responsible for the preparation of the air forces necessary for the effective prosecution of war except as otherwise assigned and, in accordance with integrated joint mobilization plans, for the expansion of the peacetime components of the Air Force to meet the needs of war.

(d) The Air Force consists of—

(1) the Regular Air Force, the Air National Guard of the United States, the Air National Guard while in the service of the United States, and the Air Force Reserve;

(2) all persons appointed or enlisted in, or conscripted into, the Air Force without component; and

(3) all Air Force units and other Air Force organizations, with their installations and supporting and auxiliary combat, training, administrative, and logistic elements; and all mem-

bers of the Air Force, including those not assigned to units; necessary to form the basis for a complete and immediate mobilization for the national defense in the event of a national emergency.

(e) Subject to subsection (f) of this section, chapter 831 of this title, and the strength authorized by law pursuant to section 115 of this title, the authorized strength of the Air Force is 70 Regular Air Force groups and such separate Regular Air Force squadrons, reserve groups, and supporting and auxiliary regular and reserve units as required.

(f) There are authorized for the Air Force 24,000 serviceable aircraft or 225,000 airframe tons of serviceable aircraft, whichever the Secretary of the Air Force considers appropriate to carry out this section. This subsection does not apply to guided missiles.

(Aug. 10, 1956, ch. 1041, 70A Stat. 493; Dec. 12, 1980, P.L. 96–513, § 504(4), 94 Stat. 2916; Oct. 1, 1986, P.L. 99–433, § 110(g)(10), 100 Stat. 1004; April 21, 1987, P.L. 100–26, § 7(g)(3), 101 Stat. 282; Dec. 4, 1987, P.L. 100–180, § 1314(b)(9), 101 Stat. 1176.)

[§ 8066. Repealed. P.L. 96–513, § 201, Dec. 12, 1980, 94 Stat. 2878]

§ 8067. Designation: officers to perform certain professional functions

(a) Medical functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary of the Air Force and who are designated as medical officers.

(b) Dental functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary and who are designated as dental officers.

(c) Veterinary functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary, and who are designated as veterinary officers.

(d) Medical service functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary, and who are designated as medical service officers.

(e) Nursing functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary and who are designated as Air Force nurses.

(f) Biomedical science functions, including physician assistant functions and chiropractic functions, in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary, and who are designated as biomedical science officers.

(g) Judge advocate functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary, and who are designated as judge advocates.

(h) Chaplain functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under reg-

ulations prescribed by the Secretary and who are designated as chaplains.

(i) Other functions in the Air Force requiring special training or experience shall be performed by members of the Air Force who are qualified under regulations prescribed by the Secretary, and who are designated as being in named categories.

(Aug. 10, 1956, ch. 1041, 70A Stat. 494; Sept. 2, 1958, P.L. 85–861, § 1(156), 72 Stat. 1513; Dec. 12, 1980, P.L. 96–513, § 504(5), 94 Stat. 2916; Dec. 1, 1981, P.L. 97–86, § 403, 95 Stat. 1105; Oct. 23, 1992, P.L. 102–484, § 505(c), 106 Stat. 2404.)

§ 8069. Air Force nurses: Chief and assistant chief; appointment; grade

(a) POSITIONS OF CHIEF AND ASSISTANT CHIEF.—There are a Chief and assistant chief of the Air Force Nurse Corps.

(b) CHIEF.—The Secretary of the Air Force shall appoint the Chief from the officers of the Regular Air Force designated as Air Force nurses whose regular grade is above lieutenant colonel and who are recommended by the Surgeon General. An appointee who holds a lower regular grade shall be appointed in the regular grade of brigadier general. The Chief serves during the pleasure of the Secretary.

(c) ASSISTANT CHIEF.—The Surgeon General shall appoint the assistant chief from the officers of the Regular Air Force designated as Air Force nurses whose regular grade is above lieutenant colonel.

(Added P.L. 104–201, § 502(b), Sept. 23, 1996, 110 Stat. 2511; amended P.L. 105–261, § 505, Oct. 17, 1998, 112 Stat. 2004.)

[§ 8071. Repealed. P.L. 90–130, § 1(25), Nov. 8, 1967, 81 Stat. 382]

[§ 8072. Transferred to § 8037]

§ 8074. Commands: territorial organization

(a) Except as otherwise prescribed by law or by the Secretary of Defense, the Air Force shall be divided into such organizations as the Secretary of the Air Force may prescribe.

(b) For Air Force purposes, the United States, its Territories, its possessions, and other places in which the Air Force is stationed or is operating, may be divided into such areas as directed by the Secretary. Officers of the Air Force may be assigned to command Air Force activities, installations, and personnel in those areas. In the discharge of the Air Force's functions or other functions authorized by law, officers so assigned have the duties and powers prescribed by the Secretary.

(c) The Military Air Transport Service is redesignated as the Military Airlift Command.

(Aug. 10, 1956, ch. 1041, 70A Stat. 495; Aug. 6, 1958, P.L. 85–599, § 4(f), 72 Stat. 517; June 11, 1965, P.L. 89–37, § 306(a), 79 Stat. 129; Oct. 1, 1986, P.L. 99–433, § 523, 100 Stat. 1063.)

§ 8075. Regular Air Force: composition

(a) The Regular Air Force is the component of the Air Force that consists of persons whose continuous service on active duty in both peace and war is contemplated by law, and of retired members of the Regular Air Force.

(b) The Regular Air Force includes—

(1) the officers and enlisted members of the Regular Air Force;

(2) the professors, registrar, and cadets at the United States Air Force Academy; and

(3) the retired officers and enlisted members of the Regular Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 496; Aug. 6, 1958, P.L. 85–600, § 1(13), 72 Stat. 523.)

[§§ 8076 to 8080. Repealed. P.L. 103–337, § 1661(a)(3)(A), Oct. 5, 1994, 108 Stat. 2980]

§ 8081. Assistant Surgeon General for Dental Services

There is an Assistant Surgeon General for Dental Services in the Air Force who is appointed by the Secretary of the Air Force upon the recommendation of the Surgeon General from officers of the Air Force above the grade of lieutenant colonel who are designated as dental officers under section 8067(b) of this title. An appointee who holds a lower regular grade shall be appointed in the regular grade of brigadier general. The Assistant Surgeon General for Dental Services serves at the pleasure of the Secretary.

(Added P.L. 95–485, § 805(c)(1), Oct. 20, 1978, 92 Stat. 1622; amended P.L. 105–261, § 506, Oct. 17, 1998, 112 Stat. 2004.)

PART II—PERSONNEL

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CHAPTER 831—STRENGTH

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[8211 to 8215. Repealed.]
[8217 to 8225. Repealed.]
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[§ 8201. Repealed. P.L. 96–513, § 202, Dec. 12, 1980, 94 Stat. 2878]

[§ 8202. Repealed. P.L. 101–510, § 403(b)(3), Nov. 5, 1990, 104 Stat. 1545]

[§§ 8203 to 8209. Repealed. P.L. 96–513, § 202, Dec. 12, 1980, 94 Stat. 2878]

§ 8210. Regular Air Force: strength in grade; general officers

(a) Subject to section 526 of this title, the authorized strength of the Regular Air Force in general officers on the active-duty list is 75/10,000 of the authorized strength of the Regular Air Force in commissioned officers on the active-duty list. Of this authorized strength, not more than one-half may be in a regular grade above brigadier general.

(b) When the application of subsection (a) results in a fraction, a fraction of one-half or more is counted as one, and a fraction of less than one-half is disregarded.

(c) General officers on the active-duty list of the Regular Air Force who are specifically authorized by law to hold a civil office under the United States, or an instrumentality thereof, are not counted in determining authorized strength under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 500; Sept. 2, 1958, P.L. 85–861, § 1(161), 72 Stat. 1514; Dec. 12, 1980, P.L. 96–513, § 504(7), 94 Stat. 2916; Dec. 5, 1991, P.L. 102–190, § 1061(a)(23)(A), 105 Stat. 1473.)

[§ 8211. Repealed. P.L. 96–513, § 202, Dec. 12, 1980, 94 Stat. 2878]

[§ 8212. Repealed. P.L. 103–337, § 1662(a)(3), Oct. 5, 1994, 108 Stat. 2988]

[§§ 8213 to 8215. Repealed. P.L. 96–513, § 202, Dec. 12, 1980, 94 Stat. 2878]

[§ 8217 to 8225. Repealed. P.L. 103–337, § 1662(a)(3), Oct. 5, 1994, 108 Stat. 2988]

[§ 8230. Repealed. P.L. 96–513, § 232, Dec. 12, 1980, 94 Stat. 2886]

CHAPTER 833—ENLISTMENTS

Sec.
8251. Definition.
8252. Regular Air Force: gender-free basis for acceptance of original enlistments.
8253. Air Force: persons not qualified.
[8254 to 8256. Repealed.]
8257. Regular Air Force: aviation cadets; qualifications, grade, limitations.
8258. Regular Air Force: reenlistment after service as an officer.
[8259 to 8263. Repealed.]

§ 8251. Definition

In this chapter, the term "enlistment" means original enlistment or reenlistment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 503; Dec. 4, 1987, P.L. 100–180, § 1231(19)(A), 101 Stat. 1161.)

§ 8252. Regular Air Force: gender-free basis for acceptance of original enlistments

In accepting persons for original enlistment in the Regular Air Force, the Secretary of the Air Force may not—

(1) set a minimum or maximum percentage of persons who may be accepted for such an enlistment according to gender for skill categories or jobs; or

(2) in any other way base the acceptance of a person for such an enlistment on gender.

(Added P.L. 100–456, § 522(a), Sept. 29, 1988, 102 Stat. 1973; amended P.L. 102–484, § 1052(40), Oct. 23, 1992, 106 Stat. 2501.)

§ 8253. Air Force: persons not qualified

In time of peace, no person may be accepted for original enlistment in the Air Force unless he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under the applicable provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(Aug. 10, 1956, ch. 1041, 70A Stat. 503; Aug. 17, 1961, P.L. 87–143, § 1(2), 75 Stat. 364; Jan. 2, 1968, P.L. 90–235, § 2(a)(4)(A), 81 Stat. 756; Dec. 12, 1980, P.L. 96–513, § 514(2), 94 Stat. 2935.)

[§§ 8254 to 8256. Repealed. P.L. 90–235, § 2(a)(4)(B), Jan. 2, 1968, 81 Stat. 756]

§ 8257. Regular Air Force: aviation cadets; qualifications, grade, limitations

(a) The grade of aviation cadet is a special enlisted grade in the Regular Air Force.

(b) Any citizen of the United States may be enlisted as an aviation cadet, if he is otherwise qualified.

(c) Any enlisted member of the Regular Air Force who is otherwise qualified may be designated, with his consent, as an aviation cadet by the Secretary of the Air Force.

(d) Except in time of war or of emergency declared by Congress, at least 20 percent of the aviation cadets designated in each fiscal year shall be selected from members of the Regular Air Force or the Regular Army who are eligible and qualified. No person may be enlisted or designated as an aviation cadet unless—

(1) he agrees in writing that, upon his successful completion of the course of training as an aviation cadet, he will accept a commission as second lieutenant in the Air Force Reserve, and will serve on active duty as such for a period of three years, unless sooner released; and

(2) if under 21 years of age, he has the consent of his parent or guardian to his agreement.

(e) While on active duty, an aviation cadet is entitled to uniforms, clothing, and equipment at the expense of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 504; Sept. 2, 1958, P.L. 85–861, § 33(a)(37), 72 Stat. 1566; Dec. 12, 1980, P.L. 96–513, § 237, 94 Stat. 2887.)

§ 8258. Regular Air Force: reenlistment after service as an officer

(a) Any former enlisted member of the Regular Air Force who has served on active duty as a reserve officer of the Air Force, or who was discharged as an enlisted member to accept a temporary appointment as an officer of the Air Force, is entitled to be reenlisted in the Regular Air Force in the enlisted grade that he held before his service as an officer, without loss of seniority or credit for service, regardless of the existence of a vacancy in his grade or of a physical disability incurred or having its inception in line of duty, if (1) his service as an officer is terminated by an honorable discharge or he is relieved from active duty for a purpose other than to await appellate review of a sentence that includes dismissal or dishonorable discharge, and (2) he applies for reenlistment within six months (or such other period as the Secretary of the Air Force prescribes for exceptional circumstances) after termination of that service.

(b) A person is not entitled to be reenlisted under this section if—

(1) the person was discharged or released from active duty as a Reserve officer on the basis of a determination of—

(A) misconduct;

(B) moral or professional dereliction;

(C) duty performance below prescribed standards for the grade held; or

(D) retention being inconsistent with the interests of national security; or

(2) the person's former enlisted status and grade was based solely on the participation by that person in a precommissioning program that resulted in the Reserve commission held by that person during the active duty from which the person was released or discharged.

(Aug. 10, 1956, ch. 1041, 70A Stat. 505; Aug. 8, 1958, P.L. 85–603, § 1(3), 72 Stat. 526; Oct. 23, 1992, P.L. 102–484, § 520(b), 106 Stat. 2409.)

[§ 8259 to 8261. Repealed. P.L. 103–337, § 1662(b)(3), Oct. 5, 1994, 108 Stat. 2990]

[§§ 8262, 8263. Repealed P.L. 90–235, § 2(a)(4)(B), Jan. 2, 1968, 81 Stat. 756]

CHAPTER 835—APPOINTMENTS IN THE REGULAR AIR FORCE

Sec.
8281. Commissioned officer grades.
[8284 to 8309. Repealed.]
8310. Warrant officers: original appointment; qualifications.
[8312 to 8314. Repealed.]

§ 8281. Commissioned officer grades

The commissioned grades in the Regular Air Force are:

(1) Major general.
(2) Brigadier general.
(3) Colonel.
(4) Lieutenant colonel.
(5) Major.
(6) Captain.
(7) First lieutenant.
(8) Second lieutenant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 507.)

[§§ 8284 to 8289. Repealed. P.L. 96–513, § 204, Dec. 12, 1980, 94 Stat. 2880]

[§ 8291. Repealed. P.L. 85–155, § 401(1), Aug. 21, 1957, 71 Stat. 390]

[§§ 8293 to 8303. Repealed. P.L. 96–513, § 204, Dec. 12, 1980, 94 Stat. 2880]

[§ 8304. Repealed. P.L. 85–155, § 401(1), Aug. 21, 1957, 71 Stat. 390]

[§§ 8305 to 8309. Repealed. P.L. 96–513, § 204, Dec. 12, 1980, 94 Stat. 2880]

§ 8310. Warrant officers: original appointment; qualifications

Original appointments as warrant officers in the Regular Air Force shall be made from persons who have served on active duty at least one year in the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 518.)

[§§ 8312 to 8314. Repealed. P.L. 96–513, § 204, Dec. 12, 1980, 94 Stat. 2880]

[CHAPTER 837—APPOINTMENTS AS RESERVE OFFICERS—REPEALED]

[§ 8351. Transferred to § 12212]

[§ 8352. Transferred to § 12214]

[§§ 8353, 8354. Repealed effective Oct. 1, 1996. P.L. 103–337, § 1629(c), Oct. 5, 1994, 108 Stat. 2963]

[§ 8355. Repealed. P.L. 88–647, § 301(21), Oct. 13, 1964, 78 Stat. 1073]

[§ 8356. Repealed. P.L. 103–337, § 1636(b), Oct. 5, 1994, 108 Stat. 2968]

[§§ 8358 to 8368. Repealed effective Oct. 1, 1996. P.L. 103–337, § 1629(c), Oct. 5, 1994, 108 Stat. 2963]

[§ 8370. Repealed. P.L. 90–130, § 1(28)(C), Nov. 8, 1967, 81 Stat. 382]

[§§ 8371 to 8378. Repealed effective Oct. 1, 1996. P.L. 103–337, § 1629(c), Oct. 5, 1994, 108 Stat. 2963]

[§ 8379. Repealed. P.L. 103–337, § 1636(c), Oct. 5, 1994, 108 Stat. 2968]

[§§ 8380 to 8396. Repealed effective Oct. 1, 1996. P.L. 103–337, § 1629(c), Oct. 5, 1994, 108 Stat. 2963]

CHAPTER 839—TEMPORARY APPOINTMENTS

Sec.
[8441 to 8445. Repealed.]
8446. Retention on active duty.
[8447 to 8352. Repealed.]

[§§ 8441, 8442. Repealed. P.L. 96–513, § 207, Dec. 12, 1980, 94 Stat. 2884]

[§ 8443. Repealed. P.L. 85–861, § 36B(25), Sept. 2, 1958, 72 Stat. 1571]

[§§ 8444, 8445. Repealed. P.L. 96–513, § 207, Dec. 12, 1980, 94 Stat. 2884]

§ 8446. Retention on active duty

The President may retain on active duty a disabled officer until—

(1) the physical condition of the officer is such that the officer will not be further benefited by retention in a military hospital or a medical facility of the Department of Veterans Affairs; or

(2) the officer is processed for physical disability benefits provided by law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 196; Sept. 2, 1958, P.L. 85–861, § 1(81)(c), 72 Stat. 1480; Nov. 29, 1989, P.L. 101–189, § 1621(a)(10), 103 Stat. 1603; April 6, 1991, P.L. 102–25, § 701(j)(6), 105 Stat. 116.)

[§ 8447. Repealed. P.L. 96–513, § 207, Dec. 12, 1980, 94 Stat. 2884]

[§§ 8448, 8449. Repealed. P.L. 96–513, § 208, Dec. 12, 1980, 94 Stat. 2884]

[§ 8450. Repealed. P.L. 90–235, § 3(b)(1), Jan. 2, 1968, 81 Stat. 758]

[§§ 8451, 8452. Repealed. P.L. 96–513, § 207, Dec. 12, 1980, 94 Stat. 2884]

CHAPTER 841—ACTIVE DUTY

Sec.
8491. Non-regular officers: status.
[8492. Repealed.]
[8494. Repealed.]
[8495 to 8502. Repealed.]
8503. Retired commissioned officers: status.
[8504. Repealed.]

§ 8491. Non-regular officers: status

A commissioned officer of the Air Force, other than of the Regular Air Force, who is on active duty in any commissioned grade has the rights and privileges, and is entitled to the benefits, provided by law for a commissioned officer of the Air Force Reserve—

(1) whose reserve grade is that in which the officer not of the Regular Air Force is serving;

(2) who has the same length of service as the officer not of the Regular Air Force; and

(3) who is on active duty in his reserve grade.

(Aug. 10, 1956, ch. 1041, 70A Stat. 524.)

[§ 8492. Repealed. P.L. 90–235, § 1(a)(2), Jan. 2, 1968, 81 Stat. 753]

[§ 8494. Repealed. P.L. 96–513, § 209(a), Dec. 12, 1980, 94 Stat. 2884]

[§ 8495 to 8502. Repealed. P.L. 103–337, § 1662(f)(2), Oct. 5, 1994, 108 Stat. 2994]

§ 8503. Retired commissioned officers: status

A retired commissioned officer of the Air Force who is on active duty is considered, for all purposes except promotion, to be an officer of the organization to which he is assigned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 526.)

[§ 8504. Repealed. P.L. 96–513, § 210, Dec. 12, 1980, 94 Stat. 2884]

CHAPTER 843—SPECIAL APPOINTMENTS, ASSIGNMENTS, DETAILS, AND DUTIES

Sec.
[8531. Repealed.]
[8537. Repealed.]
[8540 to 8542. Repealed.]
8543. Aides: detail; number authorized.
[8544 to 8546. Repealed.]
8547. Duties: chaplains; assistance required of commanding officers.
8548. Duties: warrant officers; limitations.
[8549. Repealed.]

[§ 8531. Repealed. P.L. 96–513, § 233(b), Dec. 12, 1980, 94 Stat. 2887]

[§ 8537. Repealed. P.L. 90–235, § 4(b)(1), Jan. 2, 1968, 81 Stat. 760]

[§ 8540. Repealed. P.L. 88–647, § 301(23), Oct. 13, 1964, 78 Stat. 1073]

[§ 8541. Repealed. P.L. 103–337, § 1661(c)(2), Oct. 5, 1994, 108 Stat. 2982]

[§ 8542. Repealed. P.L. 103–337, § 1662(g)(2), Oct. 5, 1994, 108 Stat. 2996]

§ 8543. Aides: detail; number authorized

(a) Each major general of the Air Force is entitled to three aides selected by him from commissioned officers of the Air Force in any grade below major.

(b) Each brigadier general of the Air Force is entitled to two aides selected by him from commissioned officers of the Air Force in any grade below captain.

(Aug. 10, 1956, ch. 1041, 70A Stat. 527.)

[§§ 8544, 8545. Repealed. P.L. 90–235, § 4(a)(6), (b)(1), Jan. 2, 1968, 81 Stat. 759, 760]

[§ 8546. Repealed. P.L. 85–861, § 36B(26), Sept. 2, 1958, 72 Stat. 1571]

§ 8547. Duties: chaplains; assistance required of commanding officers

(a) Each chaplain shall, when practicable, hold appropriate religious services at least once on each Sunday for the command to which he is assigned, and shall perform appropriate religious burial services for members of the Air Force who die while in that command.

(b) Each commanding officer shall furnish facilities, including necessary transportation, to any chaplain assigned to his command, to assist the chaplain in performing his duties.

(Aug. 10, 1956, ch. 1041, 70A Stat. 528.)

§ 8548. Duties: warrant officers; limitations

Under regulations prescribed by the President, a warrant officer may be assigned to perform duties that necessarily include those normally performed by a commissioned officer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 528.)

[§ 8549. Repealed. P.L. 102–190, § 531(a)(1), Dec. 5, 1991, 105 Stat. 1365]

CHAPTER 845—RANK AND COMMAND

Sec.
[8571. Repealed.]
8572. Rank: commissioned officers serving under temporary appointments.
[8573, 8574. Repealed.]
8575. Rank: warrant officers.
[8576 to 8578. Repealed.]
8579. Command: commissioned officers in certain designated categories.
[8580. Repealed.]
8581. Command: chaplains.
[8582. Repealed.]
8583. Requirement of exemplary conduct.

[§ 8571. Repealed. P.L. 96–513, § 211, Dec. 12, 1980, 94 Stat. 2885]

§ 8572. Rank: commissioned officers serving under temporary appointments

The President may, in accordance with the needs of the Air Force, adjust dates of rank of commissioned officers of the Air Force serving in temporary grades.

(Aug. 10, 1956, ch. 1041, 70A Stat. 529.)

[§§ 8573, 8574. Repealed. P.L. 96–513, § 211, Dec. 12, 1980, 94 Stat. 2885]

§ 8575. Rank: warrant officers

Warrant officers rank next below second lieutenants and rank among themselves within each warrant officer grade under regulations to be prescribed by the Secretary of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 530.)

[§ 8576. Repealed. P.L. 90–235, § 5(a)(2), Jan. 2, 1968, 81 Stat. 761]

[§ 8577. Repealed. P.L. 93–525, Dec. 18, 1974, 88 Stat. 1695]

[§ 8578. Repealed. P.L. 90–235, § 5(a)(2), Jan. 2, 1968, 81 Stat. 761]

§ 8579. Command: commissioned officers in certain designated categories

An officer designated as a medical, dental, veterinary, medical service, or biomedical sciences officer or as a nurse is not entitled to exercise command because of rank, except within the categories prescribed in subsection (a), (b), (c), (d), (e), (f), or (i) of section 8067 of this title, or over persons placed under his charge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 531; Sept. 2, 1958, P.L. 85–861, § 1(156), (185), 72 Stat. 1513, 1533; Dec. 12, 1980, P.L. 96–513, § 212(b), 94 Stat. 2885.)

[§ 8580. Repealed. P.L. 90–130, § 1(30), Nov. 8, 1967, 81 Stat. 382]

§ 8581. Command: chaplains

An officer designated as a chaplain has rank without command.

(Aug. 10, 1956, ch. 1041, 70A Stat. 531.)

[§ 8582. Repealed. P.L. 96–513, § 211, Dec. 12, 1980, 94 Stat. 2885]

§ 8583. Requirement of exemplary conduct

All commanding officers and others in authority in the Air Force are required—

(1) to show in themselves a good example of virtue, honor, patriotism, and subordination;

(2) to be vigilant in inspecting the conduct of all persons who are placed under their command;

(3) to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Air Force, all persons who are guilty of them; and

(4) to take all necessary and proper measures, under the laws, regulations, and customs of the Air Force, to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge.

(Added P.L. 105–85, § 507(b)(1), Nov. 18, 1997, 111 Stat. 1727.)

[CHAPTER 847—REPEALED]

[§§ 8611, 8612. Repealed. P.L. 90–235, § 8(2), Jan. 2, 1968, 81 Stat. 764]

CHAPTER 849—MISCELLANEOUS PROHIBITIONS AND PENALTIES

Sec.
[8631 to 8633. Repealed.]
8634. Air Force band: may not be paid for performance outside air base.
[8635 to 8638. Repealed.]
8639. Enlisted members: officers not to use as servants.

[§ 8631. Repealed. P.L. 90–235, § 7(b)(1), Jan. 2, 1968, 81 Stat. 763]

[§§ 8632, 8633. Repealed. P.L. 87–649, § 14c(54), (55), Sept. 7, 1962, 76 Stat. 501, 502]

§ 8634. Air Force band: may not be paid for performance outside air base

(a) PROHIBITION.—Except as provided in subsection (b), no Air Force band or member thereof may receive remuneration for furnishing music outside the limits of an air base in competition with local civilian musicians.

(b) RECORDINGS.—(1) Any Air Force band designated as a special band may produce recordings for commercial sale.

(2) Amounts received as proceeds from the sale of any such recordings may be credited to applicable appropriations of the Department of the Air Force for expenses of Air Force bands.

(3) The Secretary of the Air Force shall prescribe regulations governing the accounting of such proceeds.

(Aug. 10, 1956, ch. 1041, 70A Stat. 532; Nov. 5, 1990, P.L. 101–510, § 327(c), 104 Stat. 1532.)

[§ 8635. Repealed. P.L. 90–235, § 6(a)(7), Jan. 2, 1968, 81 Stat. 762]

[§ 8636. Repealed. P.L. 87–649, § 14c(56), Sept. 7, 1962, 76 Stat. 502]

[§ 8637. Repealed. P.L. 90–235, § 7(b)(1), Jan. 2, 1968, 81 Stat. 763]

[§ 8638. Repealed. P.L. 85–861, § 36B(27), Sept. 2, 1958, 72 Stat. 1571]

§ 8639. Enlisted members: officers not to use as servants

No officer of the Air Force may use an enlisted member of the Air Force as a servant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 533.)

[CHAPTER 851—REPEALED]

[§§ 8662, 8663. Repealed. P.L. 90–377, § 6(3), July 5, 1968, 82 Stat. 288]

CHAPTER 853—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.
8681. Presentation of United States flag upon retirement.
[8682 to 8683. Repealed.]
8684. Service credit: regular enlisted members; service as an officer to be counted as enlisted service.
[8685 to 8690. Repealed.]
8691. Flying officer rating: qualifications.
[8692, 8693. Repealed.]

§ 8681. Presentation of United States flag upon retirement

(a) PRESENTATION OF FLAG.—Upon the release of a member of the Air Force from active duty for retirement, the Secretary of the Air Force shall present a United States flag to the member.

(b) MULTIPLE PRESENTATIONS NOT AUTHORIZED.—A member is not eligible for a presentation of a flag under subsection (a) if the member has previously been presented a flag under this section or any other provision of law providing for the presentation of a United States flag incident to release from active service for retirement.

(c) NO COST TO RECIPIENT.—The presentation of a flag under this section shall be at no cost to the recipient.

(Added P.L. 105–261, § 644(c), Oct. 17, 1998, 112 Stat. 2049; amended P.L. 106–65, § 652(e), Oct. 5, 1999, 113 Stat. 666.)

[§ 8682. Repealed. P.L. 90–235, § 6(a)(2), Jan. 2, 1968, 81 Stat. 761]

[§ 8683. Repealed. P.L. 99–145, § 1301(d), Nov. 8, 1985, 99 Stat. 736]

§ 8684. Service credit: regular enlisted members; service as an officer to be counted as enlisted service

An enlisted member of the Regular Air Force is entitled to count active service as an officer in the Air Force, and in the Army, as enlisted service for all purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 535.)

[§ 8685. Repealed. P.L. 90–235, § 7(a)(3), Jan. 2, 1968, 81 Stat. 763]

[§ 8686. Repealed. P.L. 103–337, § 1662(g)(2), Oct. 5, 1994, 108 Stat. 2996]

[§ 8687. Repealed. P.L. 99–661, § 604(f)(1)(A), Nov. 14, 1986, 100 Stat. 3877]

[§ 8688. Repealed. P.L. 85–861, § 36B(29), Sept. 2, 1958, 72 Stat. 1571]

[§ 8689. Repealed. P.L. 87–649, § 14c(57), Sept. 7, 1962, 76 Stat. 502]

[§ 8690. Repealed. P.L. 90–235, § 7(b)(1), Jan. 2, 1968, 81 Stat. 763]

§ 8691. Flying officer rating: qualifications

Only officers of the Air Force in the following categories may be rated as flying officers:

(1) Officers who have aeronautical ratings as pilots of service types of aircraft or as aircraft observers.

(2) Flight surgeons.

(3) Officers undergoing flight training.

(4) Officers who are members of combat crews, other than pilots of service types of aircraft, aircraft observers, and observers.

(5) In time of war, officers who have aeronautical ratings as observers.

(Aug. 10, 1956, ch. 1041, 70A Stat. 538.)

[§ 8692. Repealed. P.L. 92–168, § 3(1), Nov. 24, 1971, 85 Stat. 489]

[§ 8693. Repealed P.L. 90–235, § 7(a)(3), Jan. 2, 1968, 81 Stat. 763]

CHAPTER 855—HOSPITALIZATION

Sec.
[8721, 8722. Repealed.]
8723. When Secretary may require.

[§§ 8721, 8722. Repealed, P.L. 99–661, § 604(f)(1)(A), Nov. 14, 1986, 100 Stat. 3877]

§ 8723. When Secretary may require

The Secretary of the Air Force may order the hospitalization, medical and surgical treatment, and domiciliary care for as long as necessary, of any member of the Air Force on active duty, and may incur obligations with respect thereto, whether or not the member incurred an injury, illness, or disease in line of duty, except in the case of a member treated in a private hospital, or by a civilian physician, while on leave of absence for more than 24 hours.

(Aug. 10, 1956, ch. 1041, 70A Stat. 539; Nov. 14, 1986, P.L. 99–661, § 604(f)(1)(D), 100 Stat. 3878; April 21, 1987, P.L. 100–26, § 7(j)(11), 101 Stat. 283.)

CHAPTER 857—DECORATIONS AND AWARDS

Sec.
8741. Medal of honor: award.
8742. Air Force cross: award.
8743. Distinguished-service medal: award.
8744. Medal of honor; Air Force cross; distinguished-service medal: limitations on award.
8745. Medal of honor; Air Force cross; distinguished-service medal: delegation of power to award.
8746. Silver star: award.
8747. Medal of honor; Air Force cross; distinguished-service cross; distinguished-service medal; silver star: replacement.
8748. Medal of honor; Air Force cross; distinguished-service cross; distinguished-service medal; silver star: availability of appropriations.
8749. Distinguished flying cross: award; limitations.
8750. Airman's Medal: award; limitations.
8751. Service medals: issue; replacement; availability of appropriations.
8752. Medals: posthumous award and presentation.

§ 8741. Medal of honor: award

The President may award, and present in the name of Congress, a medal of honor of appropriate design, with ribbons and appurtenances, to a person who, while a member of the Air Force, distinguishes himself conspicuously by gallantry and intrepidity at the risk of his life above and beyond the call of duty—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 540; July 25, 1963, P.L. 88–77, § 3(1), 77 Stat. 94.)

§ 8742. Air Force cross: award

The President may award an Air Force cross of appropriate design, with ribbons and appurtenances, to a person who, while serving in any capacity with the Air Force, distinguishes himself by extraordinary heroism not justifying the award of a medal of honor—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 540; July 6, 1960, P.L. 86–593, § 1(1), 74 Stat. 331; July 25, 1963, P.L. 88–77, § 3(2), 77 Stat. 94.)

§ 8743. Distinguished-service medal: award

The President may award a distinguished-service medal of appropriate design and a ribbon, together with a rosette or other device to be worn in place thereof, to a person who, while serving in any capacity with the Air Force, distinguishes himself by exceptionally meritorious service to the United States in a duty of great responsibility.

(Aug. 10, 1956, ch. 1041, 70A Stat. 540.)

§ 8744. Medal of honor; Air Force cross; distinguished-service medal: limitations on award

(a) No more than one medal of honor, Air Force cross, or distinguished-service medal may be awarded to a person. However, for each succeeding act that would otherwise justify the award of such a medal or cross, the President may award a suitable bar or other device to be worn as he directs.

(b) Except as provided in subsection (d), no medal of honor, Air Force cross, distinguished-service medal, or device in place thereof, may be awarded to a person unless—

(1) the award is made within three years after the date of the act justifying the award;

(2) a statement setting forth the distinguished service and recommending official recognition of it was made within two years after the distinguished service; and

(3) it appears from records of the Department of the Air Force that the person is entitled to the award.

(c) No medal of honor, Air Force cross, distinguished-service medal, or device in place thereof, may be awarded or presented to a person whose service after he distinguished himself has not been honorable.

(d) If the Secretary of the Air Force determines that—

(1) a statement setting forth the distinguished service and recommending official recognition of it was made and supported by sufficient evidence within two years after the distinguished service; and

(2) no award was made, because the statement was lost or through inadvertence the recommendation was not acted on;

a medal of honor, Air Force cross, distinguished-service medal, or device in place thereof, as the case may be, may be awarded to the person concerned within two years after the date of that determination.

(Aug. 10, 1956, ch. 1041, 70A Stat. 540; July 5, 1960, P.L. 86–582, § 1(3), 74 Stat. 320; July 6, 1960, P.L. 86–593, § 1(2), 74 Stat. 331.)

§ 8745. Medal of honor; Air Force cross; distinguished-service medal: delegation of power to award

The President may delegate his authority to award the medal of honor, Air Force cross, and distinguished-service medal, to a commanding general of a separate air force or higher unit in the field.

(Aug. 10, 1956, ch. 1041, 70A Stat. 541; July 6, 1960, P.L. 86–593, § 1(3), 74 Stat. 332.)

§ 8746. Silver star: award

The President may award a silver star of appropriate design, with ribbons and appurtenances, to a person who, while serving in any capacity with the Air Force, is cited for gallantry in action that does not warrant a medal of honor or Air Force cross—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 541; July 25, 1963, P.L. 88–77, § 3(3), 77 Stat. 95.)

§ 8747. Medal of honor; Air Force cross; distinguished-service cross; distinguished-service medal; silver star: replacement

Any medal of honor, Air Force cross, distinguished-service cross, distinguished-service medal, or silver star, or any bar, ribbon, rosette, or other device issued for wear with or in place of any of them, that is lost or destroyed, or becomes unfit for use, without fault or neglect of the person to whom it was awarded, shall be replaced without charge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 541; July 6, 1960, P.L. 86–593, § 1(4), 74 Stat. 332.)

§ 8748. Medal of honor; Air Force cross; distinguished-service cross; distinguished-service medal; silver star: availability of appropriations

The Secretary of the Air Force may spend, from any appropriation for contingent expenses of the Department of the Air Force, amounts necessary to provide medals and devices under sections 8741, 8742, 8743, 8744, 8746, 8747, and 8752 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 541; July 6, 1960, P.L. 86–593, § 1(5), 74 Stat. 332.)

§ 8749. Distinguished flying cross: award; limitations

(a) The President may award a distinguished flying cross of appropriate design with accompanying ribbon to any person who, while serving in any capacity with the Air Force, distinguishes himself by heroism or extraordinary achievement while participating in an aerial flight.

(b) Not more than one distinguished flying cross may be awarded to a person. However, for each succeeding act that would otherwise justify the award of such a cross, the President may award a suitable bar or other device to be worn as he directs.

(c) No distinguished flying cross, or device in place thereof, may be awarded or presented to a person whose service after he distinguished himself has not been honorable.

(Aug. 10, 1956, ch. 1041, 70A Stat. 541.)

§ 8750. Airman's Medal: award; limitations

(a)(1) The President may award a decoration called the "Airman's Medal", of appropriate design with accompanying ribbon, to any person who, while serving in any capacity with the Air Force,

distinguishes himself by heroism not involving actual conflict with an enemy.

(2) The authority in paragraph (1) includes authority to award the medal to a member of the Ready Reserve who was not in a duty status defined in section 101(d) of this title when the member distinguished himself by heroism.

(b) Not more than one Airman's Medal may be awarded to a person. However, for each succeeding act that would otherwise justify the award of such a medal, the President may award a suitable bar or other device to be worn as he directs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 542; July 6, 1960, P.L. 86–593, § 1(6), 74 Stat. 332; amended P.L. 105–85, § 574(c), Nov. 18, 1997, 111 Stat. 1758.)

§ 8751. Service medals: issue; replacement; availability of appropriations

(a) The Secretary of the Air Force shall procure, and issue without charge to any person entitled thereto, any service medal authorized for members of the Air Force after September 26, 1947, and any ribbon, clasp, star, or similar device prescribed as a part of that medal.

(b) Under such regulations as the Secretary may prescribe, any medal or other device issued under subsection (a) that is lost, destroyed, or becomes unfit for use without fault or neglect of the owner, may be replaced at cost. However, if the owner is a member of the Air Force, the medal or device may be replaced without charge.

(c) The Secretary may spend, from any appropriation for the support of the Air Force, amounts necessary to provide medals and devices under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 542.)

§ 8752. Medals: posthumous award and presentation

(a) If a person dies before the award of a medal of honor, distinguished-service cross, distinguished-service medal, distinguished flying cross, or device in place thereof, to which he is entitled, the award may be made and the medal or device presented to his representative, as designated by the President.

(b) If a person dies before an authorized service medal or device prescribed as a part thereof is presented to him under section 8751 of this title, it shall be presented to his family.

(Aug. 10, 1956, ch. 1041, 70A Stat. 542; Sept. 2, 1958, P.L. 85–861, § 33(a)(23), 72 Stat. 1565.)

[CHAPTER 859—REPEALED]

[§§ 8781 to 8787. Repealed. P.L. 96–513, § 213, Dec. 12, 1980, 94 Stat. 2885]

[CHAPTER 860—REPEALED]

[§§ 8791 to 8797. Repealed. P.L. 96–513, § 213, Dec. 12, 1980, 94 Stat. 2885]

[CHAPTER 861—SEPARATION FOR VARIOUS REASONS—REPEALED]

[§§ 8811 to 8813. Repealed. P.L. 90–235, § 3(a)(2), (b)(1), Jan. 2, 1968, 81 Stat. 757, 758]

[§ 8814. Repealed. P.L. 96–513, § 214, Dec. 12, 1980, 94 Stat. 2885]

[§§ 8815, 8816. Repealed. P.L. 90–235, § 3(a)(2), (b)(1), Jan. 2, 1968, 81 Stat. 757, 758]

[§ 8817. Repealed effective Oct. 1, 1996. P.L. 103–337, § 1629(c), Oct. 5, 1994, 108 Stat. 2963]

[§ 8818. Repealed. P.L. 96–513, § 236, Dec. 12, 1980, 94 Stat. 2887]

[§§ 8819, 8820. Repealed effective Oct. 1, 1996. P.L. 103–337, § 1629(c), Oct. 5, 1994, 108 Stat. 2963]

[CHAPTER 863—SEPARATION OR TRANSFER TO RETIRED RESERVE—REPEALED]

[§§ 8841, 8842. Repealed. P.L. 86–559, § 1(66), June 30, 1960, 74 Stat. 278]

[§§ 8843 to 8846. Repealed effective Oct. 1, 1996. P.L. 103–337, § 1629(c), Oct. 5, 1994, 108 Stat. 2963]

[§ 8847. Repealed. P.L. 90–130, § 1(31)(A), Nov. 8, 1967, 81 Stat. 382]

[§ 8848. Repealed effective Oct. 1, 1996. P.L. 103–337, § 1629(c), Oct. 5, 1994, 108 Stat. 2963]

[§ 8849. Repealed. P.L. 86–559, § 1(72), June 30, 1960, 74 Stat. 279]

[§§ 8850 to 8855. Repealed effective Oct. 1, 1996. P.L. 103–337, § 1629(c), Oct. 5, 1994, 108 Stat. 2963]

[CHAPTER 865—REPEALED]

[§§ 8881, 8882. Repealed. P.L. 85–155, § 401(1), Aug. 21, 1957, 71 Stat. 390]

[§§ 8883 to 8886. Repealed. P.L. 96–513, § 216, Dec. 12, 1980, 94 Stat. 2886]

[§ 8887. Repealed. P.L. 85–155, § 401(1), Aug. 21, 1957, 71 Stat. 390]

[§§ 8888, 8889. Repealed. P.L. 96–513, § 216, Dec. 12, 1980, 94 Stat. 2886]

CHAPTER 867—RETIREMENT FOR LENGTH OF SERVICE

Sec.
8911. Twenty years or more: regular or reserve commissioned officers.
[8912, 8913. Repealed.]
8914. Twenty to thirty years: enlisted members.
[8915, 8916. Repealed.]
8917. Thirty years or more: regular enlisted members.
8918. Thirty years or more: regular commissioned officers.
[8919. Repealed.]
8920. More than thirty years: permanent professors and the Director of Admissions of the United States Air Force Academy.
8921. Mandatory retirement: Superintendent of the United States Air Force Academy.
[8922 to 8923. Repealed.]
8924. Forty years or more: Air Force officers.
8925. Computation of years of service: voluntary retirement; enlisted members.
8926. Computation of years of service: voluntary retirement; regular and reserve commissioned officers.
[8927, 8928. Repealed.]
8929. Computation of retired pay: law applicable.

§ 8911. Twenty years or more: regular or reserve commissioned officers [1]

(a) The Secretary of the Air Force may, upon the officer's request, retire a regular or reserve commissioned officer of the Air Force who has at least 20 years of service computed under section 8926 of this title, at least 10 years of which have been active service as a commissioned officer.

(b) The Secretary of Defense may authorize the Secretary of the Air Force, during the period beginning on October 1, 1990, and ending on December 31, 2001, to reduce the requirement under subsection (a) for at least 10 years of active service as a commissioned officer to a period (determined by the Secretary of the Air Force) of not less than eight years.

(Aug. 10, 1956, ch. 1041, 70A Stat. 549; Nov. 5, 1990, P.L. 101–510, § 523(c), 104 Stat. 1562; Nov. 30, 1993, P.L. 103–160, § 561(c), 107 Stat. 1667; Oct. 17, 1998, P.L. 105–261, § 561(e), 112 Stat. 2025; Oct. 30, 2000, P.L. 106–398, § 1[571(e)], 114 Stat. 1654, 1654A–134.)

[§ 8912. Repealed. P.L. 85–155, § 401(1), Aug. 21, 1957, 71 Stat. 390]

[§ 8913. Repealed. P.L. 96–513, § 217(a), Dec. 12, 1980, 94 Stat. 2886]

[1] For a provision providing the Secretary of Defense with a temporary early retirement authority (TERA) by authorizing, through December 31, 2001, the retirement of selected regular or reserved commissioned officers with at least 15, but less than 20 years of service, see section 4403 of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 102–484), as amended, set out at the end of chapter 65 (ending with section 1315).

§ 8914. Twenty to thirty years: enlisted members[2]

Under regulations to be prescribed by the Secretary of the Air Force, an enlisted member of the Air Force who has at least 20, but less than 30, years of service computed under section 8925 of this title may, upon his request, be retired.

(Aug. 10, 1956, ch. 1041, 70A Stat. 550; Sept. 8, 1980, P.L. 96–343, § 9(b)(1), 94 Stat. 1128; Oct. 5, 1994, P.L. 103–337, § 515(b), 108 Stat. 2753.)

[§§ 8915, 8916. Repealed. P.L. 96–513, title II, § 217(a), Dec. 12, 1980, 94 Stat. 2886]

§ 8917. Thirty years or more: regular enlisted members

A regular enlisted member of the Air Force who has at least 30 years of service computed under section 8925 of this title shall be retired upon his request.

(Aug. 10, 1956, ch. 1041, 70A Stat. 550.)

§ 8918. Thirty years or more: regular commissioned officers

A regular commissioned officer of the Air Force who has at least 30 years of service computed under section 8926 of this title may be retired upon his request, in the discretion of the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 550.)

[§ 8919. Repealed. P.L. 96–513, § 217(a), Dec. 12, 1980, 94 Stat. 2886]

§ 8920. More than thirty years: permanent professors and the Director of Admissions of the United States Air Force Academy

(a) The Secretary of the Air Force may retire an officer specified in subsection (b) who has more than 30 years of service as a commissioned officer.

(b) Subsection (a) applies in the case of the following officers:

(1) Any permanent professor of the United States Air Force Academy.

(2) The Director of Admissions of the United States Air Force Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 551; amended in its entirety P.L. 104–106, § 509(b)(1), Feb. 10, 1996, 110 Stat. 298.)

§ 8921. Mandatory retirement: Superintendent of the United States Air Force Academy

Upon the termination of the detail of an officer to the position of Superintendent of the United States Air Force Academy, the Secretary of the Air Force shall retire the officer under any provision of this chapter under which the officer is eligible to retire.

(Added P.L. 106–65, § 532(a)(3)(A), Oct. 5, 1999, 113 Stat. 603.)

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[2] For a provision providing the Secretary of Defense with a temporary early retirement authority (TERA) by authorizing, through December 31, 2001, the retirement of selected enlisted members with at least 15, but less than 20 years of service, see section 4403 of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 102–484), as amended, set out at the end of chapter 65 (ending with section 1315).

[§§ 8921 to 8923. Repealed. P.L. 96–513, § 217(a), Dec. 12, 1980, 94 Stat. 2886]

§ 8924. Forty years or more: Air Force officers

(a) Except as provided in section 1186 of this title, a commissioned officer of the Air Force who has at least 40 years of service computed under section 8926 of this title shall be retired upon his request.

(b) Any warrant officer of the Air Force who has at least 40 years of service computed under section 8926(a) of this title shall be retired upon his request.

(Aug. 10, 1956, ch. 1041, 70A Stat. 552; Dec. 12, 1980, P.L. 96–513, § 504(18), 94 Stat. 2917.)

§ 8925. Computation of years of service: voluntary retirement; enlisted members

(a) For the purpose of determining whether an enlisted member of the Air Force may be retired under section 8914 or 8917 of this title, his years of service are computed by adding all active service in the armed forces.

(b) Time required to be made up under section 972(a) of this title may not be counted in computing years of service under subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 552; Sept. 2, 1958, P.L. 85–861, § 1(195), 72 Stat. 1540; Sept. 8, 1980, P.L. 96–343, § 9(b)(2), 94 Stat. 1129; July 1, 1986, P.L. 99–348, § 204(c), 100 Stat. 698; Nov. 29, 1989, P.L. 101–189, § 652(a)(6), 103 Stat. 1461; Oct. 5, 1994, P.L. 103–337, § 635(c)(1), 108 Stat. 2789; Feb. 10, 1996, P.L. 104–106, § 561(d)(4)(A), 110 Stat. 323.)

§ 8926. Computation of years of service: voluntary retirement; regular and reserve commissioned officers

(a) For the purpose of determining whether an officer of the Air Force may be retired under section 8911, 8918, or 8924 of this title, his years of service are computed by adding—

(1) all active service performed as a member of the Army or the Air Force and;

(2) all service in the Navy or Marine Corps that may be included in determining the eligibility of an officer of the Navy or Marine Corps for retirement.

(b) For the purpose of determining whether a medical officer of the Regular Air Force may be retired under section 8911, 8918, or 8924 of this title, his years of service are computed by adding to his service under subsection (a) all service performed as a contract surgeon, acting assistant surgeon, or contract physician, under a contract to serve full time and to take and change station as ordered.

(c) For the purpose of determining whether a dental officer of the Regular Air Force may be retired under section 8911, 8918, or 8924 of this title, his years of service are computed by adding to his service under subsection (a) all service as a contract dental surgeon or acting dental surgeon.

(d) Section 972(b) of this title excludes from computation of an officer's years of service for purposes of this section any time identified with respect to that officer under that section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 552; Aug. 25, 1959, P.L. 86–197, § 1(8), 73 Stat. 426; Nov. 29, 1989, P.L. 101–189, § 652(a)(7), 103 Stat. 1461; Feb. 10, 1996, P.L. 104–106, § 561(d)(4)(B), 110 Stat. 323.)

[§ 8927. Repealed. P.L. 96–513, § 217(a), Dec. 12, 1980, 94 Stat. 2886]

[§ 8928. Repealed. P.L. 85–155, § 401(1), Aug. 21, 1957, 71 Stat. 390]

§ 8929. Computation of retired pay: law applicable

A member of the Air Force retired under this chapter is entitled to retired pay computed under chapter 871 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 554.)

CHAPTER 869—RETIRED GRADE

Sec.
8961. General rule.
8962. Higher grade for service in special positions.
8963. Highest grade held satisfactorily: Reserve enlisted members reduced in grade not as a result of the member's misconduct.
8964. Higher grade after 30 years of service: warrant officers and enlisted members.
8965. Restoration to former grade: retired warrant officers and enlisted members.
8966. Retired lists.

§ 8961. General rule

(a) The retired grade of a regular commissioned officer of the Air Force who retires other than for physical disability, and the retired grade of a reserve commissioned officer of the Air Force who retires other than for physical disability, is determined under section 1370 of this title.

(b) Unless entitled to a higher retired grade under some other provision of law, a Regular or Reserve of the Air Force not covered by subsection (a) who retires other than for physical disability retires in the regular or reserve grade that he holds on the date of his retirement.

(Aug. 10, 1956, ch. 1041, 70A Stat. 554; Dec. 12, 1980, P.L. 96–513, § 504(19), 94 Stat. 2917; Oct. 5, 1994, P.L. 103–337, § 1674(c)(2), 108 Stat. 3016; Oct. 30, 2000, P.L. 106–398, § 1[506(b)], 114 Stat. 1654, 1654A–102.)

§ 8962. Higher grade for service in special positions

Upon retirement, any permanent professor of the United States Air Force Academy whose grade is below brigadier general, and whose service as such a professor has been long and distinguished, may, in the discretion of the President, be retired in the grade of brigadier general.

(Aug. 10, 1956, ch. 1041, 70A Stat. 554; Sept. 2, 1958, P.L. 85–861, § 1(197), 72 Stat. 1541; Oct. 22, 1965, P.L. 89–288, § 6, 79 Stat. 1050; Sept. 8, 1980, P.L. 96–343, § 13(b)(1), (2), 94 Stat. 1131; Dec. 12, 1980, P.L. 96–513, § 504(20), 94 Stat. 2917; Feb. 10, 1996, P.L. 104–106, § 502(c)–(d)(1), 110 Stat. 293.)

§ 8963. Highest grade held satisfactorily: Reserve enlisted members reduced in grade not as a result of the member's misconduct

(a) A Reserve enlisted member of the Air Force described in subsection (b) who is retired under section 8914 of this title shall be retired in the highest enlisted grade in which the member served on active duty satisfactorily (or, in the case of a member of the National Guard, in which the member served on full-time National Guard duty satisfactorily), as determined by the Secretary of the Air Force.

(b) This section applies to a Reserve enlisted member who—

(1) at the time of retirement is serving on active duty (or, in the case of a member of the National Guard, on full-time National Guard duty) in a grade lower than the highest enlisted grade held by the member while on active duty (or full-time National Guard duty); and

(2) was previously administratively reduced in grade not as a result of the member's own misconduct, as determined by the Secretary of the Air Force.

(c) This section applies with respect to Reserve enlisted members who are retired under section 8914 of this title after September 30, 1996.

(Added P.L. 104–201, § 532(c)(1), Sept. 23, 1996, 110 Stat. 2519.)

§ 8964. Higher grade after 30 years of service: warrant officers and enlisted members

(a) Each retired member of the Air Force covered by subsection (b) who is retired with less than 30 years of active service is entitled, when his active service plus his service on the retired list totals 30 years, to be advanced on the retired list to the highest grade in which he served on active duty satisfactorily (or, in the case of a member of the National Guard, in which he served on full-time duty satisfactorily), as determined by the Secretary of the Air Force.

(b) This section applies to—

(1) warrant officers of the Air Force;

(2) enlisted members of the Regular Air Force; and

(3) reserve enlisted members of the Air Force who, at the time of retirement, are serving on active duty (or, in the case of members of the National Guard, on full-time duty).

(Aug. 10, 1956, ch. 1041, 70A Stat. 555; Sept. 2, 1958, P.L. 85–861, § 1(198A), 72 Stat. 1541; P.L. 98–525, § 553(c), Oct. 19, 1984, 98 Stat. 2528; Dec. 4, 1987, P.L. 100–180, § 512(c), 101 Stat. 1090.)

§ 8965. Restoration to former grade: retired warrant officers and enlisted members

Each retired warrant officer or enlisted member of the Air Force who has been advanced on the retired list to a higher commissioned grade under section 8964 of this title, and who applies to the Secretary of the Air Force within three months after his advancement, shall, if the Secretary approves, be restored on the retired list to his former warrant-officer or enlisted status, as the case may be.

(Aug. 10, 1956, ch. 1041, 70A Stat. 555; Dec. 4, 1987, P.L. 100–180, § 512(d)(3), 101 Stat. 1090.)

§ 8966. Retired lists

(a) The Secretary of the Air Force shall maintain a retired list containing the name of each retired commissioned officer of the Regular Air Force.

(b) The Secretary shall maintain a retired list containing the name of—

(1) each person entitled to retired pay under any law providing retired pay for commissioned officers of the Air Force, other than of the Regular Air Force; and

(2) each retired warrant officer or enlisted member of the Air Force who is advanced to a commissioned grade.

(c) The Secretary shall maintain a retired list containing the name of each retired warrant officer of the Air Force.

(d) The Secretary shall maintain a retired list containing the name of each retired enlisted member of the Regular Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 556; Sept. 2, 1958, P.L. 85–861, § 1(199), 72 Stat. 1541; Dec. 4, 1987, P.L. 100–180, § 512(d)(3), 101 Stat. 1090.)

CHAPTER 871—COMPUTATION OF RETIRED PAY

Sec.
8991. Computation of retired pay.
8992. Recomputation of retired pay to reflect advancement on retired list.

§ 8991. Computation of retired pay

(a) COMPUTATION.—

(1) FORMULA.—The monthly retired pay of a member entitled to such pay under this subtitle is computed by multiplying—

(A) the member's retired pay base (as computed under section 1406(e) or 1407 of this title), by

(B) the retired pay multiplier prescribed in section 1409 of this title for the number of years credited to the member under section 1405 of this title.

(2) ADDITIONAL 10 PERCENT FOR CERTAIN ENLISTED MEMBERS CREDITED WITH EXTRAORDINARY HEROISM.—If a member who is retired under section 8914 of this title has been credited by the Secretary of the Air Force with extraordinary heroism in the line of duty, the member's retired pay shall be increased by 10 percent of the amount determined under paragraph (1) (but to not more than 75 percent of the retired pay base upon which the computation of such retired pay is based). The Secretary's determination as to extraordinary heroism is conclusive for all purposes.

(b) GENERAL RULES.—

(1) USE OF MOST FAVORABLE FORMULA.—If a person would otherwise be entitled to retired pay computed under more than one formula in subsection (a) or the table in section 1401 of this title, he is entitled to be paid under the applicable formula that is most favorable to him.

(2) ROUNDING TO NEXT LOWER DOLLAR.—The amount computed under subsection (a), if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(c) SPECIAL RULE FOR RETIRED RESERVE ENLISTED MEMBERS COVERED BY SECTION 8963.—In the case of a Reserve enlisted member retired under section 8914 of this title whose retired grade is determined under section 8963 of this title and who first became a member of a uniformed service before September 8, 1980, the retired pay base of the member (notwithstanding section 1406(a)(1) of this title) is the amount of the monthly basic pay of the member's retired grade (determined based upon the rates of basic pay applicable on the date of the member's retirement), and that amount shall be used for the purposes of subsection (a)(1)(A) rather than the amount computed under section 1406(e) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 556; [amended numerous times,] revised in its entirely P.L. 99–348, § 204(a), July 1, 1986, 100 Stat. 697; amended P.L. 103–337, § 635(c)(2), Oct. 5, 1994, 108 Stat. 2789; P.L. 104–201, § 532(d)(3), Sept. 23, 1996, 110 Stat. 2520.)

§ 8992. Recomputation of retired pay to reflect advancement on retired list

(a) ENTITLEMENT TO RECOMPUTATION.—An enlisted member or warrant officer of the Air Force who is advanced on the retired list under section 8964 of this title is entitled to recompute his retired pay in accordance with this section.

(b) FORMULA.—The monthly retired pay of a member entitled to recompute that pay under this section is computed by multiplying—

(1) the member's retired pay base (as computed under section 1406(e) or 1407 of this title), by

(2) the retired pay multiplier prescribed in section 1409 of this title for the number of years credited to the member under section 1405 of this title.

(c) ROUNDING TO NEXT LOWER DOLLAR.—The amount computed under subsection (b), if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(Aug. 10, 1956, ch. 1041, 70A Stat. 557; Sept. 8, 1980, P.L. 96–342, § 813(e), 94 Stat. 1109; Dec. 12, 1980, P.L. 96–513, § 514(8), 94 Stat. 2935; Oct. 12, 1982, P.L. 95–295, § 1(52), 96 Stat. 1300; Sept. 24, 1983, P.L. 98–94, §§ 922, 923, 97 Stat. 642, 643; July 1, 1986, P.L. 99–348, § 204(b), 100 Stat. 698; Oct. 5, 1994, P.L. 103–337, § 635(c)(3), 108 Stat. 2789.)

CHAPTER 873—CIVILIAN EMPLOYEES

Sec.
9021. Air University: civilian faculty members.
[9022. Repealed.]
[9023. Repealed.]
9025. Production of supplies and munitions: hours and pay of laborers and mechanics.
9027. Civilian special agents of the Office of Special Investigations: authority to execute warrants and make arrests.

§ 9021. Air University: civilian faculty members

(a) AUTHORITY OF SECRETARY.—The Secretary of the Air Force may employ as many civilians as professors, instructors, and lecturers at a school of the Air University as the Secretary considers necessary.

(b) COMPENSATION OF FACULTY MEMBERS.—The compensation of persons employed under this section shall be as prescribed by the Secretary.

(c) APPLICATION TO CERTAIN FACULTY MEMBERS.—(1) Except as provided in paragraph (2), this section shall apply with respect to persons who are selected by the Secretary for employment as professors, instructors, and lecturers at a school of the Air University after February 27, 1990.

(2) This section shall not apply with respect to professors, instructors, and lecturers employed at a school of the Air University if the duration of the principal course of instruction offered at that school is less than 10 months.

(Added P.L. 101–189, § 1124(d)(1), Nov. 29, 1989, 103 Stat. 1559; amended P.L. 103–337, § 1070(a)(17), Oct. 5, 1994, 108 Stat. 2856.)

[§ 9022. Repealed. P.L. 98–94, § 932(c)(1), Sept. 24, 1983, 97 Stat. 650]

[§ 9023. Repealed. P.L. 87–651, § 128(1), Sept. 7, 1962, 76 Stat. 514]

§ 9025. Production of supplies and munitions: hours and pay of laborers and mechanics

During a national emergency declared by the President, the regular working hours of laborers and mechanics of the Department of the Air Force producing military supplies or munitions are 8 hours a day or 40 hours a week. However, under regulations prescribed by the Secretary of the Air Force these hours may be exceeded. Each laborer or mechanic who works more than 40 hours in a workweek shall be paid at a rate not less than one and one-half times the regular hourly rate for each hour in excess of 40.

(Aug. 10, 1956, ch. 1041, 70A Stat. 558.)

§ 9027. Civilian special agents of the Office of Special Investigations: authority to execute warrants and make arrests

(a) AUTHORITY.—The Secretary of the Air Force may authorize any Department of the Air Force civilian employee described in subsection (b) to have the same authority to execute and serve warrants and other processes issued under the authority of the United States and to make arrests without a warrant as may be authorized under section 1585a of this title for special agents of the Defense Criminal Investigative Service.

(b) AGENTS TO HAVE AUTHORITY.—Subsection (a) applies to any employee of the Department of the Air Force who is a special agent of the Air Force Office of Special Investigations (or a successor to that office) whose duties include conducting, supervising, or coordinating investigations of criminal activity in programs and operations of the Department of the Air Force.

(c) GUIDELINES FOR EXERCISE OF AUTHORITY.—The authority provided under subsection (a) shall be exercised in accordance with guidelines prescribed by the Secretary of the Air Force and approved by the Secretary of Defense and the Attorney General and any other applicable guidelines prescribed by the Secretary of the Air Force, the Secretary of Defense, or the Attorney General.

(Added P.L. 106–398, § 1[554(c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–127.)

PART III—TRAINING

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CHAPTER 901—TRAINING GENERALLY

Sec.
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9302. Enlisted members of Air Force: schools.
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§ 9301. Members of Air Force: detail as students, observers, and investigators at educational institutions, industrial plants, and hospitals

(a) The Secretary of the Air Force may detail members of the Air Force as students at such technical, professional, and other civilian educational institutions, or as students, observers, or investigators at such industrial plants, hospitals, and other places, as are best suited to enable them to acquire knowledge or experience in the specialties in which it is considered necessary that they perfect themselves.

(b) An officer, other than one of the Regular Air Force on the active-duty list, who is detailed under subsection (a) shall be ordered to additional active duty immediately upon termination of the detail, for a period at least as long as the detail. However, if the detail is for 90 days or less, the officer may be ordered to that additional duty only with his consent and in the discretion of the Secretary.

(c) No Reserve of the Air Force may be detailed as a student, observer, or investigator, or ordered to active duty under this section, without his consent and, if a member of the Air National Guard of the United States, without the approval of the governor or other appropriate authority of the State or Territory, Puerto Rico, or the District of Columbia of whose Air National Guard he is a member.

(d) The Secretary may require, as a condition of a detail under subsection (a), that an enlisted member accept a discharge and be reenlisted in his component for at least three years.

(e) The total length of details of an enlisted member of the Air Force under subsection (a) during one enlistment period may not exceed 50 percent of that enlistment.

(f) At no time may more than 8 percent of the authorized strength in commissioned officers, 8 percent of the authorized strength in warrant officers, or 2 percent of the authorized strength

in enlisted members, of the Regular Air Force, or more than 8 percent of the actual strength in commissioned officers, 8 percent of the actual strength in warrant officers, or 2 percent of the actual strength in enlisted members, of the total of reserve components of the Air Force, be detailed as students under subsection (a). For the purposes of this subsection, the actual strength of each category of Reserves includes both members on active duty and those not on active duty.

(g) Expenses incident to the detail of members under this section shall be paid from any funds appropriated for the Department of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 559; Nov. 29, 1973, P.L. 93–169, 87 Stat. 689; Dec. 12, 1980, P.L. 96–513, § 504(23), 94 Stat. 2917; Sept. 29, 1988, P.L. 100–456, § 1234(a), 102 Stat. 2059.)

§ 9302. Enlisted members of Air Force: schools

(a) So far as consistent with the requirements of military training and service, and under regulations to be prescribed by the Secretary of the Air Force with the approval of the President, enlisted members of the Air Force shall be permitted to study and receive instruction to increase their military efficiency and to enable them to return to civilian life better equipped for industrial, commercial, and business occupations. Part of this instruction may be vocational education in agriculture or the mechanic arts. Civilian teachers may be employed to aid Air Force officers in this instruction.

(b) Schools for the instruction of enlisted members of the Air Force in the common branches of education, including United States history, shall be maintained at all air bases at which members of the Air Force are stationed. The Secretary may detail members of the Air Force to carry out this subsection. The commander of each air base where schools are maintained under this subsection shall provide a suitable room or building for school and religious purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 560.)

§ 9303. Aviation cadets and aviation students: schools

The Secretary of the Air Force shall establish and maintain—

(1) one or more schools for the training and instruction of aviation cadets; and

(2) courses of instruction for aviation students at one or more established flying schools.

(Aug. 10, 1956, ch. 1041, 70A Stat. 560.)

§ 9304. Aviation students: detail of enlisted members of Air Force

The Secretary of the Air Force may detail enlisted Regulars of the Air Force, and enlisted Reserves of the Air Force who are on active duty, for training and instruction as aviation students in their respective grades at schools selected by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 560.)

§ 9305. Civilian flying school instructors: instruction at Air Force training commands

(a) The Secretary of the Air Force may provide for the instruction and training, at Air Force training commands, of civilians se-

lected from the instructional staffs of civilian flying schools that are accredited by the Department of the Air Force for the education and training of members of the Air Force.

(b) The training of civilians under subsection (a) shall be without cost to the United States, except for supplies necessary for training purposes.

(c) A civilian undergoing training under subsection (a) may be treated in a Government hospital if he becomes sick or is injured. However, that treatment shall be without cost to the United States except for services of Government medical personnel and the use of hospital equipment other than medicine or supplies.

(d) No civilian who sustains a personal injury, and no dependent of a civilian who dies of disease or injury, while undergoing training under subsection (a), is entitled to any compensation, pension, or gratuity for that injury or death.

(Aug. 10, 1956, ch. 1041, 70A Stat. 560.)

§ 9306. Service schools: leaves of absence for instructors

The officer in charge of an Air Force service school may grant a leave of absence for the period of the suspension of the ordinary academic studies, without deduction of pay or allowances, to any officer on duty exclusively as an instructor at the school.

(Aug. 10, 1956, ch. 1041, 70A Stat. 561.)

§ 9314. United States Air Force Institute of Technology

(a) When the United States Air Force Institute of Technology is accredited by a nationally recognized accreditation association or authority, the Commander of the Air University may, under such regulations as the Secretary of the Air Force may prescribe, confer appropriate degrees upon persons who meet the requirements for those degrees in the Resident College of that Institute.

(b)(1) The Secretary of the Air Force may employ as many civilian faculty members at the United States Air Force Institute of Technology as is consistent with the needs of the Air Force and with Department of Defense personnel limits.

(2) The Secretary shall prescribe regulations determining—

(A) titles and duties of civilian members of the faculty; and

(B) pay of civilian members of the faculty, notwithstanding chapter 53 of title 5, but subject to the limitation set out in section 5373 of title 5.

(Aug. 10, 1956, ch. 1041, 70A Stat. 561; Nov. 8, 1985, P.L. 99–145, § 504(a), 99 Stat. 622; Nov. 14, 1986, P.L. 99–661, § 510, 100 Stat. 3868; Nov. 5, 1990, P.L. 101–509, § 529[101(b)(6)(C)], 104 Stat. 1440; P.L. 105–261, § 1102, Oct. 17, 1998, 112 Stat. 2141.)

§ 9315. Community College of the Air Force: associate degrees

(a) ESTABLISHMENT AND MISSION.—There is in the Air Force a Community College of the Air Force. Such college, in cooperation with civilian colleges and universities, shall—

(1) prescribe programs of higher education for enlisted members described in subsection (b) designed to improve the technical, managerial, and related skills of such members and to prepare such members for military jobs which require the utilization of such skills; and

(2) monitor on a continuing basis the progress of members pursuing such programs.

(b) MEMBERS ELIGIBLE FOR PROGRAMS.—Subject to such other eligibility requirements as the Secretary concerned may prescribe, the following members of the armed forces are eligible to participate in programs of higher education under subsection (a)(1):

(1) Enlisted members of the Air Force.

(2) Enlisted members of the armed forces other than the Air Force who are serving as instructors at Air Force training schools.

(c) CONFERRAL OF DEGREES.—(1) Subject to paragraph (2), the commander of the Air Education and Training Command of the Air Force may confer an academic degree at the level of associate upon any enlisted member who has completed the program prescribed by the Community College of the Air Force.

(2) No degree may be conferred upon any enlisted member under this section unless (A) the Community College of the Air Force certifies to the commander of the Air Education and Training Command of the Air Force that such member has satisfied all the requirements prescribed for such degree, and (B) the Secretary of Education determines that the standards for the award of academic degrees in agencies of the United States have been met.

(Added P.L. 94–361, § 602, July 14, 1976, 90 Stat. 928; amended P.L. 96–513, § 514(9), Dec. 12, 1980, 94 Stat. 2935; P.L. 103–160, § 1182(a)(12), Nov. 30, 1993, 107 Stat. 1772; P.L. 104–106, § 1078(a), Feb. 10, 1996, 110 Stat. 451; P.L. 105–85, § 552(a), (b), Nov. 18, 1997, 111 Stat. 1748.)

§ 9316. Training and support for A–10 aircraft

The Secretary of the Air Force shall provide each military department with flight training, fleet support, and depot maintenance with respect to all A–10 aircraft assigned to each such department.

(Added P.L. 101–510, § 1439(c), Nov. 5, 1990, 104 Stat. 1689.)

§ 9317. Air University: graduate-level degrees

(a) AUTHORITY.—Upon the recommendation of the faculty of the appropriate school of the Air University, the commander of the Air University may confer—

(1) the degree of master of strategic studies upon graduates of the Air War College who fulfill the requirements for that degree;

(2) the degree of master of military operational art and science upon graduates of the Air Command and Staff College who fulfill the requirements for that degree; and

(3) the degree of master of airpower art and science upon graduates of the School of Advanced Airpower Studies who fulfill the requirements for that degree.

(b) REGULATIONS.—The authority provided by subsection (a) shall be exercised under regulations prescribed by the Secretary of the Air Force.

(Added P.L. 103–337, § 913(a)(1), Oct. 5, 1994, 108 Stat. 2828; amended P.L. 106–65, § 543(a), (b)(1), Oct. 5, 1999, 113 Stat. 607.)

§ 9319. Recruit basic training: separate housing for male and female recruits

(a) PHYSICALLY SEPARATE HOUSING.—(1) The Secretary of the Air Force shall provide for housing male recruits and female recruits separately and securely from each other during basic training.

(2) To meet the requirements of paragraph (1), the sleeping areas and latrine areas provided for male recruits shall be physically separated from the sleeping areas and latrine areas provided for female recruits by permanent walls, and the areas for male recruits and the areas for female recruits shall have separate entrances.

(3) The Secretary shall ensure that, when a recruit is in an area referred to in paragraph (2), the area is supervised by one or more persons who are authorized and trained to supervise the area.

(b) ALTERNATIVE SEPARATE HOUSING.—If male recruits and female recruits cannot be housed as provided under subsection (a) by October 1, 2001, at a particular installation, the Secretary of the Air Force shall require (on and after that date) that male recruits in basic training at such installation be housed in barracks or other troop housing facilities that are only for males and that female recruits in basic training at such installation be housed in barracks or other troop housing facilities that are only for females.

(c) CONSTRUCTION PLANNING.—In planning for the construction of housing to be used for housing recruits during basic training, the Secretary of the Air Force shall ensure that the housing is to be constructed in a manner that facilitates the housing of male recruits and female recruits separately and securely from each other.

(d) BASIC TRAINING DEFINED.—In this section, the term "basic training" means the initial entry training program of the Air Force that constitutes the basic training of new recruits.

(Added P.L. 105–261, § 521(c)(1), Oct. 17, 1998, 112 Stat. 2011.)

§ 9320. Recruit basic training: privacy

The Secretary of the Air Force shall require that access by military training instructors and other training personnel to a living area in which recruits are housed during basic training shall be limited after the end of the training day, other than in the case of an emergency or other exigent circumstance, to military training instructors and other training personnel who are of the same sex as the recruits housed in that living area or to superiors in the chain of command of those recruits who, if not of the same sex as the recruits housed in that living area, are accompanied by a member (other than a recruit) who is of the same sex as the recruits housed in that living area.

(Added P.L. 105–261, § 522(c)(1), Oct. 17, 1998, 112 Stat. 2013.)

CHAPTER 903—UNITED STATES AIR FORCE ACADEMY

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§ 9331. Establishment; Superintendent; faculty [1]

(a) There is in the Department of the Air Force an Air Force Academy (hereinafter in this chapter referred to as the "Academy") for the instruction and preparation for military service of selected persons called "Air Force cadets". The organization of the Academy shall be prescribed by the Secretary of the Air Force.

(b) There shall be at the Academy the following:

(1) A Superintendent.

(2) A dean of the Faculty, who is a permanent professor.

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[1] Section 553 of the National Defense Authorization Act for Fiscal Year 1995 (P.L. 103–337; 108 Stat. 2772) provides:

SEC. 553. PROHIBITION ON IMPOSITION OF ADDITIONAL CHARGES OR FEES FOR ATTENDANCE AT CERTAIN ACADEMIES.

(a) PROHIBITION.—Except as provided in subsection (b), no charge or fee for tuition, room, or board for attendance at an academy named in subsection (c) may be imposed unless the charge or fee is specifically authorized by a law enacted after [Oct. 5, 1994].

(b) EXCEPTION.—The prohibition specified in subsection (a) shall not apply with respect to any item or service provided to cadets or midshipmen at an academy named in subsection (c) for which a charge or fee is imposed as of [Oct. 5, 1994]. The Secretary of Defense or the Secretary of Transportation, as the case shall be, shall notify Congress of any change made by an academy in the amount of a charge or fee authorized under this subsection.

(c) COVERED ACADEMIES.—This section applies to the following:

(1)–(2) [omitted]

(3) The United States Air Force Academy.

(4)–(5) [omitted]

(3) A Commandant of Cadets.
(4) 21 permanent professors.
(5) A chaplain.
(6) A director of admissions.

(Aug. 10, 1956, ch. 1041, 70A Stat. 561; Aug. 6, 1958, P.L. 85–600, § 1(19), 72 Stat. 523; Dec. 12, 1980, P.L. 96–513, § 514(9), 94 Stat. 2935; Nov. 29, 1989, P.L. 101–189, § 515(a)(1), 103 Stat. 1441; Oct. 23, 1992, P.L. 102–484, § 523(b), 106 Stat. 2410; Nov. 30, 1993, P.L. 103–160, § 533(b)(3), 107 Stat. 1658.)

§ 9332. Departments and professors: titles

he Secretary of the Air Force may prescribe the titles of each of the departments of instruction and the professors of the Academy. However, the change of the title of a department or officer does not affect the status, rank, or eligibility for promotion or retirement of, or otherwise prejudice, a professor at the Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 562.)

§ 9333. Superintendent; faculty: appointment and detail

(a) The Superintendent and the Commandant of Cadets of the Academy shall be detailed to those positions by the President from the officers of the Air Force.

(b) The permanent professors of the Academy shall be appointed by the President, by and with the advice and consent of the Senate.

(c) The director of admissions of the Academy shall be appointed by the President, by and with the advice and consent of the Senate, and shall perform such duties as the Superintendent of the Academy may prescribe with the approval of the Secretary of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 562; Aug. 6, 1958, P.L. 85–600, § 1(20), 72 Stat. 523; Nov. 29, 1989, P.L. 101–189, § 515(a)(2), 103 Stat. 1441.)

§ 9333a. Superintendent: condition for detail to position

As a condition for detail to the position of Superintendent of the Academy, an officer shall acknowledge that upon termination of that detail the officer shall be retired.

(Added P.L. 106–65, § 532(a)(3)(B), Oct. 5, 1999, 113 Stat. 603.)

§ 9334. Command and supervision

(a) The immediate government of the Academy is under the Superintendent, who is also the commanding officer of the Academy and of the military post.

(b) The permanent professors and the director of admissions exercise command only in the academic department of the Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 562; Aug. 6, 1958, P.L. 85–600, § 1(21), 72 Stat. 524; Nov. 29, 1989, P.L. 101–189, § 515(a)(3), 103 Stat. 1441.)

§ 9335. Dean of the Faculty

(a) The Dean of the Faculty shall be appointed as an additional permanent professor from the permanent professors who have served as heads of departments of instruction at the Academy.

(b) While serving as Dean of the Faculty, an officer of the Air Force who holds a grade lower than brigadier general shall hold the grade of brigadier general, if appointed to that grade by the

President, by and with the advice and consent of the Senate. The retirement age of an officer so appointed is that of a permanent professor of the Academy. An officer so appointed is counted for purposes of the limitation in section 526(a) of this title on general officers of the Air Force on active duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 562; Sept. 2, 1958, P.L. 85–861, § 33(a)(46)(A), 72 Stat. 1567; Nov. 14, 1986, P.L. 99–661, § 508(c), 100 Stat. 3867; Oct. 23, 1992, P.L. 102–484, § 521(b), 106 Stat. 2409; P.L. 106–65, § 533(b), Oct. 5, 1999, 113 Stat. 605.)

§ 9336. Permanent professors; director of admissions

(a) A permanent professor of the Academy, other than the Dean of the Faculty, who is the head of a department of instruction, or who has served as such a professor for more than six years, has the grade of colonel. However, a permanent professor appointed from the Regular Air Force has the grade of colonel after the date when he completes six years of service as a professor, or after the date on which he would have been promoted had he been selected for promotion from among officers in the promotion zone, whichever is earlier. All other permanent professors have the grade of lieutenant colonel.

(b) A person appointed as director of admissions of the Academy has the regular grade of lieutenant colonel, and, after he has served six years as director of admissions, has the regular grade of colonel. However, a person appointed from the Regular Air Force has the regular grade of colonel after the date when he completes six years of service as director of admissions, or after the date on which he would have been promoted had he been selected for promotion from among officers in the promotion zone, whichever is earlier.

(Aug. 10, 1956, ch. 1041, 70A Stat. 562; Aug. 6, 1958, P.L. 85–600, § 1(22), 72 Stat. 524; Sept. 2, 1958, P.L. 85–861, § 33(a)(46)(B), 72 Stat. 1567; Dec. 12, 1980, P.L. 96–513, § 218(b), § 504(24), 94 Stat. 2886, 2917; P.L. 98–525, § 533(d)(2), Oct. 19, 1984, 98 Stat. 2528; Nov. 29, 1989, P.L. 101–189, § 515(a)(4), (b)(1), 103 Stat. 1441.)

§ 9337. Chaplain

There shall be a chaplain at the Academy, who must be a clergyman, appointed by the President for a term of four years. The chaplain is entitled to the same allowances for public quarters as are allowed to a captain, and to fuel and light for quarters in kind. The chaplain may be reappointed.

(Aug. 10, 1956, ch. 1041, 70A Stat. 562; Sept. 7, 1962, P.L. 87–651, § 117, 76 Stat. 513.)

§ 9338. Civilian faculty: number; compensation

(a) The Secretary of the Air Force may employ as many civilians as professors, instructors, and lecturers at the Academy as the Secretary considers necessary.

(b) The compensation of persons employed under this section is as prescribed by the Secretary.

(c) The Secretary of the Air Force may, notwithstanding the provisions of subchapter V of chapter 55 of title 5 or section 6101 of such title, prescribe for persons employed under this section the following:

(1) The work schedule, including hours of work and tours of duty, set forth with such specificity and other characteristics as the Secretary determines appropriate.

(2) Any premium pay or compensatory time off for hours of work or tours of duty in excess of the regularly scheduled hours or tours of duty.

(Added P.L. 103–160, § 533(b), Nov. 30, 1993, 107 Stat. 1658; amended P.L. 106–65, § 1107(c), Oct. 5, 1999, 113 Stat. 778.)

§ 9341. Faculty and other officers: leaves of absence

The Superintendent of the Academy may grant a leave of absence for the period of the suspension of the ordinary academic studies, without deduction of pay or allowances, to a professor, assistant professor, instructor, or other officer of the Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 563.)

§ 9341a. Cadets: appointment by the President

Cadets at the Academy shall be appointed by the President alone. An appointment is conditional until the cadet is admitted.

(Added P.L. 97–60, § 203(c)(2)(A), Oct. 14, 1981, 95 Stat. 1006.)

§ 9342. Cadets: appointment; numbers, territorial distribution

(a) The authorized strength of Air Force Cadets of the Academy (determined for any year as of the day before the last day of the academic year) is 4,000. Subject to that limitation, Air Force Cadets are selected as follows:

(1) 65 cadets selected in order of merit as established by competitive examination from the children of members of the armed forces who were killed in action or died of, or have a service-connected disability rated at not less than 100 per centum resulting from wounds or injuries received or diseases contracted in, or preexisting injury or disease aggravated by, active service, children of members who are in a "missing status" as defined in section 551(2) of title 37, and children of civilian employees who are in "missing status" as defined in section 5561(5) of title 5. The determination of the Department of Veterans Affairs as to service connection of the cause of death or disability, and the percentage at which the disability is rated, is binding upon the Secretary of the Air Force.

(2) Five cadets nominated at large by the Vice President or, if there is no Vice President, by the President pro tempore of the Senate.

(3) Ten cadets from each State, five of whom are nominated by each Senator from that State.

(4) Five cadets from each congressional district, nominated by the Representative from the district.

(5) Five cadets from the District of Columbia, nominated by the Delegate to the House of Representatives from the District of Columbia.

(6) Two cadets from the Virgin Islands, nominated by the Delegate in Congress from the Virgin Islands.

(7) Six cadets from Puerto Rico, five of whom are nominated by the Resident Commissioner from Puerto Rico and one who is a native of Puerto Rico nominated by the Governor of Puerto Rico.

(8) Two cadets from Guam, nominated by the Delegate in Congress from Guam.

(9) One cadet from American Samoa, nominated by the Delegate in Congress from American Samoa.

(10) One cadet from the Commonwealth of the Northern Mariana Islands, nominated by the resident representative from the commonwealth.

Each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, is entitled to nominate 10 persons for each vacancy that is available to him under this section. Nominees may be submitted without ranking or with a principal candidate and 9 ranked or unranked alternates. Qualified nominees not selected for appointment under this subsection shall be considered qualified alternates for the purposes of selection under other provisions of this chapter.

(b) In addition, there may be appointed each year at the Academy cadets as follows:

(1) one hundred selected by the President from the children of members of an armed force who—

(A) are on active duty (other than for training) and who have served continuously on active duty for at least eight years;

(B) are, or who died while they were, retired with pay or granted retired or retainer pay;

(C) are serving as members of reserve components and are credited with at least eight years of service computed under section 12733 of this title; or

(D) would be, or who died while they would have been, entitled to retired pay under chapter 1223 of this title except for not having attained 60 years of age;

however, a person who is eligible for selection under clause (1) of subsection (a) may not be selected under this clause.

(2) 85 nominated by the Secretary of the Air Force from enlisted members of the Regular Air Force.

(3) 85 nominated by the Secretary of the Air Force from enlisted members of reserve components of the Air Force.

(4) 20 nominated by the Secretary of the Air Force, under regulations prescribed by him, from the honor graduates of schools designated as honor schools by the Department of the Army, the Department of the Navy, or the Department of the Air Force, and from members of the Air Force Reserve Officers' Training Corps.

(5) 150 selected by the Secretary of the Air Force in order of merit (prescribed pursuant to section 9343 of this title) from qualified alternates nominated by persons named in clauses (3) and (4) of subsection (a).

(c) The President may also appoint as cadets at the Academy children of persons who have been awarded the Medal of Honor for acts performed while in the armed forces.

(d) The Superintendent may nominate for appointment each year 50 persons from the country at large. Persons nominated under this paragraph may not displace any appointment authorized under clauses (2) through (9) of subsection (a) and may not cause the total strength of Air Force Cadets to exceed the authorized number.

(e) If the annual quota of cadets under subsection (b) (1), (2), or (3) is not filled, the Secretary may fill the vacancies by nominating for appointment other candidates from any of these sources who were found best qualified on examination for admission and not otherwise nominated.

(f) Each candidate for admission nominated under clauses (3) through (9) of subsection (a) must be domiciled in the State, or in the congressional district, from which he is nominated, or in the District of Columbia, Puerto Rico, American Samoa, Guam, or the Virgin Islands, if nominated from one of those places.

(g) The Secretary of the Air Force may limit the number of cadets authorized to be appointed under this section to the number that can be adequately accommodated at the Academy as determined by the Secretary after consulting with the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, subject to the following:

(1) Cadets chargeable to each nominating authority named in subsection (a)(3) or (4) may not be limited to less than four.

(2) If the Secretary limits the number of appointments under subsection (a)(3) or (4), appointments under subsection (b)(1)–(4) are limited as follows:

(A) 27 appointments under subsection (b)(1);

(B) 27 appointments under subsection (b)(2);

(C) 27 appointments under subsection (b)(3); and

(D) 13 appointments under subsection (b)(4).

(3) If the Secretary limits the number of appointments under subsection (b)(5), appointments under subsection (b)(2)–(4) are limited as follows:

(A) 27 appointments under subsection (b)(2);

(B) 27 appointments under subsection (b)(3); and

(C) 13 appointments under subsection (b)(4).

(4) The limitations provided for in this subsection do not affect the operation of subsection (e).

(h) The Secretary of the Air Force shall furnish to any Member of Congress, upon the written request of such Member, the name of the Congressman or other nominating authority responsible for the nomination of any named or identified person for appointment to the Academy.

(i) For purposes of the limitation in subsection (a) establishing the aggregate authorized strength of Air Force Cadets, the Secretary of the Air Force may for any year permit a variance in that limitation by not more than one percent. In applying that limitation, and any such variance, the last day of an academic year shall be considered to be graduation day.

(Aug. 10, 1956, ch. 1041, 70A Stat. 563; Sept. 14, 1962, P.L. 87–663, § 1 (5), (6), 76 Stat. 547; Mar. 3, 1964, P.L. 88–276, § 4(1), 78 Stat. 151; Oct. 13, 1966, P.L. 89–650, § 1 (1)–(3), (5), 80 Stat. 896; July 5, 1968, P.L. 90–374, 82 Stat. 283; Oct. 22, 1968, P.L. 90–623, § 2(8), 82 Stat. 1314; Sept. 22, 1970, P.L. 91–405, § 204(c), 84 Stat. 852; Aug. 7, 1972, P.L. 92–365, § 1(3), 86 Stat. 505; Nov. 29, 1973, P.L. 93–171, § 3(1)–(4), 87 Stat. 690; Oct. 7, 1975, P.L. 94–106, § 803(b)(1), 89 Stat. 538; Dec. 12, 1980, P.L. 96–513, § 514(11), 94 Stat. 2935; Dec. 24, 1980, P.L. 96–600, § 2(c), 94 Stat. 3493; Oct. 14, 1981, P.L. 97–60, § 203(c)(1), 95 Stat. 1006; Sept. 24, 1983, P.L. 98–94, § 1005 (a)(3), (b)(3), 97 Stat. 660, 661; Nov. 29, 1989, P.L. 101–189, § 1621(a)(1), 103 Stat. 1602; Nov. 5, 1990, P.L. 101–510, § 532(c)(1), 104 Stat. 1563; Nov. 30, 1993, P.L. 103–160, § 531, 107 Stat. 1657; Oct. 5, 1994, P.L. 103–337, § 1674(c)(3), 108 Stat. 3017; Feb. 10, 1996, P.L. 104–106, §§ 532(c), 1502(a)(1), 110 Stat. 315, 502; P.L. 105–85, § 1073(a)(62), Nov. 18, 1997, 111 Stat. 1903; P.L. 106–65, §§ 531(b)(3), 1076(i), Oct. 5, 1999, 113 Stat. 602, 774; Oct. 30, 2000, P.L. 106–398, § 1[531(c)], 114 Stat. 1654, 1654A–110.)

§ 9343. Cadets: appointment; to bring to full strength

If it is determined that, upon the admission of a new class to the Academy, the number of cadets at the Academy will be below the authorized number, the Secretary of the Air Force may fill the vacancies by nominating additional cadets from qualified candidates designated as alternates and from other qualified candidates who competed for nomination and are recommended and found qualified by the Academy Board. At least three-fourths of those nominated under this section shall be selected from qualified alternates nominated by the persons named in clauses (2) through (8) of section 9342(a) of this title, and the remainder from qualified candidates holding competitive nominations under any other provision of law. An appointment under this section is an additional appointment and is not in place of an appointment otherwise authorized by law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 564; Mar. 3, 1964, P.L. 88–276, § 4(2), 78 Stat. 153; Nov. 2, 1966, P.L. 89–718, § 46, 80 Stat. 1121; Nov. 29, 1973, P.L. 93–171, § 3(5), 87 Stat. 691; Nov. 5, 1990, P.L. 101–510, § 532(c)(2), 104 Stat. 1563.)

§ 9344. Selection of persons from foreign countries

(a)(1) The Secretary of the Air Force may permit not more than 40 persons at any one time from foreign countries to receive instruction at the Academy. Such persons shall be in addition to the authorized strength of the Air Force Cadets of the Academy under section 9342 of this title.

(2) The Secretary of the Air Force, upon approval by the Secretary of Defense, shall determine the countries from which persons may be selected for appointment under this section and the number of persons that may be selected from each country. The Secretary of the Air Force may establish entrance qualifications and methods of competition for selection among individual applicants under this section and shall select those persons who will be permitted to receive instruction at the Academy under this section.

(3) In selecting persons to receive instruction under this section from among applicants from the countries approved under paragraph (2), the Secretary of the Air Force shall give a priority to persons who have a national service obligation to their countries upon graduation from the Academy.

(b)(1) A person receiving instruction under this section is entitled to the pay, allowances, and emoluments of a cadet appointed from the United States, and from the same appropriations.

(2) Each foreign country from which a cadet is permitted to receive instruction at the Academy under this section shall reimburse the United States for the cost of providing such instruction, including the cost of pay, allowances, and emoluments provided under paragraph (1) unless a written waiver of reimbursement is granted by the Secretary of Defense. The Secretary of the Air Force shall prescribe the rates for reimbursement under this paragraph, except that the reimbursement rates may not be less than the cost to the United States of providing such instruction, including pay, allowances, and emoluments, to a cadet appointed from the United States.

(3) The amount of reimbursement waived under paragraph (2) may not exceed 50 percent of the per-person reimbursement amount otherwise required to be paid by a foreign country under such paragraph, except in the case of not more than 20 persons receiving instruction at the Air Force Academy under this section at any one time.

(c)(1) Except as the Secretary of the Air Force determines, a person receiving instruction under this section is subject to the same regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as a cadet at the Academy appointed from the United States. The Secretary may prescribe regulations with respect to access to classified information by a person receiving instruction under this section that differ from the regulations that apply to a cadet at the Academy appointed from the United States.

(2) A person receiving instruction under this section is not entitled to an appointment in an armed force of the United States by reason of graduation from the Academy.

(d) A person receiving instruction under this section is not subject to section 9346(d) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 564; Sept. 24, 1983, amended P.L. 98–94, § 1004(c)(1), 97 Stat. 659; Nov. 18, 1997, P.L. 105–85, § 543(c), 111 Stat. 1744; P.L. 106–65, § 534(c), Oct. 5, 1999, 113 Stat. 605; Oct. 30, 2000, P.L. 106–398, § 1[532(c)], 114 Stat. 1654, 1654A–110.)

§ 9345. Exchange program with foreign military academies

(a) EXCHANGE PROGRAM AUTHORIZED.—The Secretary of the Air Force may permit a student enrolled at a military academy of a foreign country to receive instruction at the Air Force Academy in exchange for an Air Force cadet receiving instruction at that foreign military academy pursuant to an exchange agreement entered into between the Secretary and appropriate officials of the foreign country. Students receiving instruction at the Academy under the exchange program shall be in addition to persons receiving instruction at the Academy under section 9344 of this title.

(b) LIMITATIONS ON NUMBER AND DURATION OF EXCHANGES.—An exchange agreement under this section between the Secretary and a foreign country shall provide for the exchange of students on a one-for-one basis each fiscal year. Not more than 24 Air Force cadets and a comparable number of students from all foreign military academies participating in the exchange program may be ex-

changed during any fiscal year. The duration of an exchange may not exceed the equivalent of one academic semester at the Air Force Academy.

(c) COSTS AND EXPENSES.—(1) A student from a military academy of a foreign country is not entitled to the pay, allowances, and emoluments of an Air Force cadet by reason of attendance at the Air Force Academy under the exchange program, and the Department of Defense may not incur any cost of international travel required for transportation of such a student to and from the sponsoring foreign country.

(2) The Secretary may provide a student from a foreign country under the exchange program, during the period of the exchange, with subsistence, transportation within the continental United States, clothing, health care, and other services to the same extent that the foreign country provides comparable support and services to the exchanged Air Force cadet in that foreign country.

(3) The Air Force Academy shall bear all costs of the exchange program from funds appropriated for the Academy. Expenditures in support of the exchange program may not exceed $120,000 during any fiscal year.

(d) APPLICATION OF OTHER LAWS.—Subsections (c) and (d) of section 9344 of this title shall apply with respect to a student enrolled at a military academy of a foreign country while attending the Air Force Academy under the exchange program.

(e) REGULATIONS.—The Secretary shall prescribe regulations to implement this section. Such regulations may include qualification criteria and methods of selection for students of foreign military academies to participate in the exchange program.

(Added P.L. 105–85, § 542(c)(1), Nov. 18, 1997, 111 Stat. 1742; amended P.L. 106–65, § 535(c), Oct. 5, 1999, 113 Stat. 606.)

§ 9346. Cadets: requirements for admission

(a) To be eligible for admission to the Academy a candidate must be at least 17 years of age and must not have passed his twenty-third birthday on July 1 of the year in which he enters the Academy.

(b) To be admitted to the Academy, an appointee must show, by an examination held under regulations prescribed by the Secretary of the Air Force, that he is qualified in the subjects prescribed by the Secretary.

(c) A candidate designated as a principal or an alternate for appointment as a cadet shall appear for physical examination at a time and place designated by the Secretary.

(d) To be admitted to the Academy, an appointee must take and subscribe to an oath prescribed by the Secretary of the Air Force. If a candidate for admission refuses to take and subscribe to the prescribed oath, his appointment is terminated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 565; Nov. 2, 1966, P.L. 89–718, § 47, 80 Stat. 1121; Sept. 23, 1996, P.L. 104–201, § 555(d), 110 Stat. 2527.)

§ 9347. Cadets; nominees: effect of redistricting of States

If as a result of redistricting a State the domicile of a cadet, or a nominee, nominated by a Representative falls within a congressional district other than that from which he was nominated,

he is charged to the district in which his domicile so falls. For this purpose, the number of cadets otherwise authorized for that district is increased to include him. However, the number as so increased is reduced by one if he fails to become a cadet or when he is finally separated from the Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 565.)

§ 9348. Cadets: agreement to serve as officer

(a) Each cadet shall sign an agreement with respect to the cadet's length of service in the armed forces. The agreement shall provide that the cadet agrees to the following:

(1) That the cadet will complete the course of instruction at the Academy.

(2) That upon graduation from the Academy the cadet—

(A) will accept an appointment, if tendered, as a commissioned officer of the Regular Air Force; and

(B) will serve on active duty for at least five years immediately after such appointment.

(3) That if an appointment described in paragraph (2) is not tendered or if the cadet is permitted to resign as a regular officer before completion of the commissioned service obligation of the cadet, the cadet—

(A) will accept an appointment as a commissioned officer as a Reserve in the Air Force for service in the Air Force Reserve; and

(B) will remain in that reserve component until completion of the commissioned service obligation of the cadet.

(b)(1) The Secretary of the Air Force may transfer to the Air Force Reserve, and may order to active duty for such period of time as the Secretary prescribes (but not to exceed four years), a cadet who breaches an agreement under subsection (a). The period of time for which a cadet is ordered to active duty under this paragraph may be determined without regard to section 651(a) of this title.

(2) A cadet who is transferred to the Air Force Reserve under paragraph (1) shall be transferred in an appropriate enlisted grade or rating, as determined by the Secretary.

(3) For the purposes of paragraph (1), a cadet shall be considered to have breached an agreement under subsection (a) if the cadet is separated from the Academy under circumstances which the Secretary determines constitute a breach by the cadet of the cadet's agreement to complete the course of instruction at the Academy and accept an appointment as a commissioned officer upon graduation from the Academy.

(c) The Secretary of the Air Force shall prescribe regulations to carry out this section. Those regulations shall include—

(1) standards for determining what constitutes, for the purpose of subsection (b), a breach of an agreement under subsection (a);

(2) procedures for determining whether such a breach has occurred; and

(3) standards for determining the period of time for which a person may be ordered to serve on active duty under subsection (b).

(d) In this section, the term "commissioned service obligation", with respect to an officer who is a graduate of the Academy, means the period beginning on the date of the officer's appointment as a commissioned officer and ending on the sixth anniversary of such appointment or, at the discretion of the Secretary of Defense, any later date up to the eighth anniversary of such appointment.

(e)(1) This section does not apply to a cadet who is not a citizen or national of the United States.

(2) In the case of a cadet who is a minor and who has parents or a guardian, the cadet may sign the agreement required by subsection (a) only with the consent of a parent or guardian.

(Aug. 10, 1956, ch. 1041, 70A Stat. 565; Mar. 3, 1964, P.L. 88–276, § 5(a), 78 Stat. 153; Oct. 13, 1964, P.L. 88–647, § 301(25), 78 Stat. 1073; Oct. 19, 1984, P.L. 98–525, §§ 541(c), 542(d), 98 Stat. 2529; revised in its entirety Nov. 8, 1985, P.L. 99–145, § 512(c), 99 Stat. 625; Nov. 29, 1989, P.L. 101–189, §§ 511(d), 1622(e)(5), 103 Stat. 1439, 1605; Feb. 10, 1996, P.L. 104–106, § 531(c), 110 Stat. 314.)

§ 9349. Cadets: organization; service; instruction

(a) A cadet shall perform duties at such places and of such type as the President may direct.

(b) The course of instruction at the Academy is four years.

(c) The Secretary of the Air Force shall so arrange the course of studies at the Academy that cadets are not required to pursue their studies on Sunday.

(d) Cadets shall be trained in the duties of members of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 566.)

§ 9350. Cadets: clothing and equipment

(a) The Secretary of the Air Force may prescribe the amount to be credited to a cadet, upon original admission to the Academy, for the cost of his initial issue of clothing and equipment. That amount shall be deducted from his pay. If a cadet is discharged before graduation while owing the United States for pay advanced for the purchase of required clothing and equipment, he shall turn in so much of his clothing and equipment of a distinctive military nature as is necessary to repay the amount advanced. If the value of the clothing and equipment turned in does not cover the amount owed, the indebtedness shall be canceled.

(b) Under such regulations as the Secretary may prescribe, uniforms and equipment shall be furnished to a cadet at the Academy upon his request.

(Aug. 10, 1956, ch. 1041, 70A Stat. 566.)

§ 9351. Cadets: deficiencies in conduct or studies; effect of failure on successor

(a) A cadet who is reported as deficient in conduct or studies and recommended to be discharged from the Academy may not, unless recommended by the Academy Board, be returned or reappointed to the Academy.

(b) Any cadet who fails to pass a required examination because he is deficient in any one subject of instruction is entitled to a reexamination of equal scope and difficulty in that subject, if he applies in writing to the Superintendent within 10 days after he is officially notified of his failure. The reexamination shall be held within

60 days after the date of his application. If the cadet passes the reexamination and is otherwise qualified, he shall be readmitted to the Academy. If he fails, he may not have another examination.

(c) The failure of a member of a graduating class to complete the course with his class does not delay the admission of his successor.

(Aug. 10, 1956, ch. 1041, 70A Stat. 566.)

§ 9352. Cadets: hazing

(a) Subject to the approval of the Secretary of the Air Force, the Superintendent of the Academy shall issue regulations—

(1) defining hazing;

(2) designed to prevent that practice; and

(3) prescribing dismissal, suspension, or other adequate punishment for violations.

(b) If a cadet who is charged with violating a regulation issued under subsection (a), the penalty for which is or may be dismissal from the Academy, requests in writing a trial by a general court-martial, he may not be dismissed for that offense except under sentence of such a court.

(c) A cadet dismissed from the Academy for hazing may not be reappointed as an Air Force cadet, and is ineligible for appointment as a commissioned officer in a regular component of the Army, Navy, Air Force, or Marine Corps, until two years after the graduation of his class.

(Aug. 10, 1956, ch. 1041, 70A Stat. 566.)

§ 9353. Cadets: degree and commission on graduation

(a) The Superintendent of the Academy may, under such conditions as the Secretary of the Air Force may prescribe, confer the degree of bachelor of science upon graduates of the Academy.

(b) Notwithstanding any other provision of law, a cadet who completes the prescribed course of instruction may, upon graduation, be appointed a second lieutenant in the Regular Air Force under section 531 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 567; Sept. 2, 1958, P.L. 85–861, §§ 1(201), 33(a)(43), 72 Stat. 1541, 1567; Dec. 12, 1980, P.L. 96–513, § 504(25), 94 Stat. 2917; Nov. 18, 1997, P.L. 105–85, § 542(d), 111 Stat. 1743.)

§ 9354. Buildings and grounds: buildings for religious worship

The Secretary of the Air Force may authorize any denomination, sect, or religious body to erect a building for religious worship at the Air Force Academy, if its erection will not interfere with the use of the reservation for military purposes and will be without expense to the United States. Such a building shall be removed, or its location changed, without compensation for it and without expense to the United States, by the denomination, sect, or religious body that erected it, whenever in the opinion of the Secretary public or military necessity so requires.

(Aug. 10, 1956, ch. 1041, 70A Stat. 567.)

§ 9355. Board of Visitors

(a) A Board of Visitors to the Academy is constituted annually of—

(1) the chairman of the Committee on Armed Services of the Senate, or his designee;

(2) three other members of the Senate designated by the Vice President or the President pro tempore of the Senate, two of whom are members of the Committee on Appropriations of the Senate;

(3) the chairman of the Committee on Armed Services of the House of Representatives, or his designee;

(4) four other members of the House of Representatives designated by the Speaker of the House of Representatives, two of whom are members of the Committee on Appropriations of the House of Representatives; and

(5) six persons designated by the President.

(b) The persons designated by the President serve for three years each except that any member whose term of office has expired shall continue to serve until his successor is appointed. The President shall designate two persons each year to succeed the members whose terms expire that year.

(c) If a member of the Board dies or resigns, a successor shall be designated for the unexpired portion of the term by the official who designated the member.

(d) The Board shall visit the Academy annually. With the approval of the Secretary of the Air Force, the Board or its members may make other visits to the Academy in connection with the duties of the Board or to consult with the Superintendent of the Academy.

(e) The Board shall inquire into the morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy which the Board decides to consider.

(f) Within 60 days after its annual visit, the Board shall submit a written report to the President of its action, and of its views and recommendations pertaining to the Academy. Any report of a visit, other than the annual visit, shall, if approved by a majority of the members of the Board, be submitted to the President within 60 days after the approval.

(g) Upon approval by the Secretary, the Board may call in advisers for consultation.

(h) While performing his duties, each member of the Board and each adviser shall be reimbursed under Government travel regulations for his travel expenses.

(Aug. 10, 1956, ch. 1041, 70A Stat. 567; Dec. 23, 1980, P.L. 96–579, § 13(c), 94 Stat. 3369; Feb. 10, 1996, P.L. 104–106, §§ 1061(e)(2), 1502(a)(12), 110 Stat. 443, 503; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 9356. Acceptance of guarantees with gifts for major projects

(a) ACCEPTANCE AUTHORITY.—Subject to subsection (c), the Secretary of the Air Force may accept from a donor or donors a qualified guarantee for the completion of a major project for the benefit of the Academy.

(b) OBLIGATION AUTHORITY.—The amount of a qualified guarantee accepted under this section shall be considered as contract authority to provide obligation authority for purposes of Federal fiscal and contractual requirements. Funds available for a project for which such a guarantee has been accepted may be obligated and expended for the project without regard to whether the total amount of the funds and other resources available for the project (not taking into account the amount of the guarantee) is sufficient to pay for completion of the project.

(c) NOTICE OF PROPOSED ACCEPTANCE.—The Secretary of the Air Force may not accept a qualified guarantee under this section for the completion of a major project until after the expiration of 30 days following the date upon which a report of the facts concerning the proposed guarantee is submitted to Congress.

(d) PROHIBITION ON COMMINGLING OF FUNDS.—The Secretary of the Air Force may not enter into any contract or other transaction involving the use of a qualified guarantee and appropriated funds in the same contract or transaction.

(e) DEFINITIONS.—In this section:

(1) MAJOR PROJECT.—The term "major project" means a project for the purchase or other procurement of real or personal property, or for the construction, renovation, or repair of real or personal property, the total cost of which is, or is estimated to be, at least $1,000,000.

(2) QUALIFIED GUARANTEE.—The term "qualified guarantee", with respect to a major project, means a guarantee that—

(A) is made by one or more persons in connection with a donation, specifically for the project, of a total amount in cash or securities that, as determined by the Secretary of the Air Force, is sufficient to defray a substantial portion of the total cost of the project;

(B) is made to facilitate or expedite the completion of the project in reasonable anticipation that other donors will contribute sufficient funds or other resources in amounts sufficient to pay for completion of the project;

(C) is set forth as a written agreement that provides for the donor to furnish in cash or securities, in addition to the donor's other gift or gifts for the project, any additional amount that may become necessary for paying the cost of completing the project by reason of a failure to obtain from other donors or sources funds or other resources in amounts sufficient to pay the cost of completing the project; and

(D) is accompanied by—

(i) an irrevocable and unconditional standby letter of credit for the benefit of the Academy that is in the amount of the guarantee and is issued by a major United States commercial bank; or

(ii) a qualified account control agreement.

(3) QUALIFIED ACCOUNT CONTROL AGREEMENT.—The term "qualified account control agreement", with respect to a guarantee of a donor, means an agreement among the donor, the

Secretary of the Air Force, and a major United States investment management firm that—

(A) ensures the availability of sufficient funds or other financial resources to pay the amount guaranteed during the period of the guarantee;

(B) provides for the perfection of a security interest in the assets of the account for the United States for the benefit of the Academy with the highest priority available for liens and security interests under applicable law;

(C) requires the donor to maintain in an account with the investment management firm assets having a total value that is not less than 130 percent of the amount guaranteed; and

(D) requires the investment management firm, at any time that the value of the account is less than the value required to be maintained under subparagraph (C), to liquidate any noncash assets in the account and reinvest the proceeds in Treasury bills issued under section 3104 of title 31.

(4) MAJOR UNITED STATES COMMERCIAL BANK.—The term "major United States commercial bank" means a commercial bank that—

(A) is an insured bank (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813));

(B) is headquartered in the United States; and

(C) has net assets in a total amount considered by the Secretary of the Air Force to qualify the bank as a major bank.

(5) MAJOR UNITED STATES INVESTMENT MANAGEMENT FIRM.—The term "major United States investment management firm" means any broker, dealer, investment adviser, or provider of investment supervisory services (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) or section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2)) or a major United States commercial bank that—

(A) is headquartered in the United States; and

(B) holds for the account of others investment assets in a total amount considered by the Secretary of the Air Force to qualify the firm as a major investment management firm.

(Added P.L. 106–65, § 2871(c)(1), Oct. 5, 1999, 113 Stat. 875; amended P.L. 106–398, § 1[1087(a)(17)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291.)

§ 9357. Grants for faculty research for scientific, literary, and educational purposes: acceptance; authorized grantees

(a) ACCEPTANCE OF RESEARCH GRANTS.—The Secretary of the Air Force may authorize the Superintendent of the Academy to accept qualifying research grants under this section. Any such grant may only be accepted if the work under the grant is to be carried out by a professor or instructor of the Academy for a scientific, literary, or educational purpose.

(b) QUALIFYING GRANTS.—A qualifying research grant under this section is a grant that is awarded on a competitive basis by an entity referred to in subsection (c) for a research project with a scientific, literary, or educational purpose.

(c) ENTITIES FROM WHICH GRANTS MAY BE ACCEPTED.—A grant may be accepted under this section only from a corporation, fund, foundation, educational institution, or similar entity that is organized and operated primarily for scientific, literary, or educational purposes.

(d) ADMINISTRATION OF GRANT FUNDS.—The Secretary shall establish an account for administering funds received as research grants under this section. The Superintendent shall use the funds in the account in accordance with applicable regulations and the terms and conditions of the grants received.

(e) RELATED EXPENSES.—Subject to such limitations as may be provided in appropriations Acts, appropriations available for the Academy may be used to pay expenses incurred by the Academy in applying for, and otherwise pursuing, award of a qualifying research grant.

(f) REGULATIONS.—The Secretary of the Air Force shall prescribe regulations for the administration of this section.

(Added P.L. 105–261, § 1063(c)(1), Oct. 17, 1998, 112 Stat. 2131.)

CHAPTER 905—AVIATION LEADERSHIP PROGRAM

Sec.
9381. Establishment of program.
9382. Supplies and clothing.
9383. Allowances.

§ 9381. Establishment of program

Under regulations prescribed by the Secretary of Defense, the Secretary of the Air Force may establish and maintain an Aviation Leadership Program to provide undergraduate pilot training and necessary related training to personnel of the air forces of friendly, less-developed foreign nations. Training under this chapter shall include language training and programs to promote better awareness and understanding of the democratic institutions and social framework of the United States.

(Added P.L. 103–160, § 1178(b), Nov. 30, 1993, 107 Stat. 1769, [former § 9381 repealed by § 301(26) of P.L. 88–647].)

§ 9382. Supplies and clothing

(a) The Secretary of the Air Force may, under such conditions as the Secretary may prescribe, provide to a person receiving training under this chapter—

(1) transportation incident to the training;

(2) supplies and equipment to be used during the training;

(3) flight clothing and other special clothing required for the training; and

(4) billeting, food, and health services.

(b) The Secretary of the Air Force may authorize such expenditures from the appropriations of the Air Force as the Secretary considers necessary for the efficient and effective maintenance of the Program in accordance with this chapter.

(Added P.L. 103–160, § 1178(b), Nov. 30, 1993, 107 Stat. 1769, [former § 9382 repealed by § 301(26) of P.L. 88–647].)

§ 9383. Allowances

The Secretary of the Air Force may pay to a person receiving training under this chapter a living allowance at a rate to be prescribed by the Secretary, taking into account the amount of living allowances authorized for a member of the armed forces under similar circumstances.

(Added P.L. 103–160, § 1178(b), Nov. 30, 1993, 107 Stat. 1769, [former §§ 9383–9387 repealed by § 301(26) of P.L. 88–647].)

CHAPTER 907—SCHOOLS AND CAMPS

Sec.
9411. Establishment: purpose.
9412. Operation.
9413. Transportation and subsistence during travel.
9414. Quartermaster and ordnance property: sales.
9415. Inter-American Air Forces Academy.

§ 9411. Establishment: purpose

The Secretary of the Air Force may maintain schools and camps for the military instruction and training of persons selected, upon their application, from warrant officers and enlisted members of the Air Force and civilians, to qualify them for appointment as reserve officers, or enlistment as reserve noncommissioned officers, for service in the Air Force Reserve.

(Aug. 10, 1956, ch. 1041, 70A Stat. 571.)

§ 9412. Operation

In maintaining camps established under section 9411 of this title, the Secretary of the Air Force may—

(1) prescribe the periods during which they will be operated;

(2) prescribe regulations for their administration;

(3) prescribe the courses to be taught;

(4) detail members of the Regular Air Force to designated duties relating to the camps;

(5) use necessary supplies and transportation;

(6) furnish uniforms, subsistence, and medical attendance and supplies to persons attending the camp; and

(7) authorize necessary expenditures from proper Air Force funds for—

(A) water;

(B) fuel;

(C) light;

(D) temporary structures, except barracks and officers' quarters;

(E) screening;

(F) damages resulting from field exercises;

(G) expenses incident to theoretical winter instruction of trainees; and

(H) other expenses incident to maintaining the camps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 571.)

§ 9413. Transportation and subsistence during travel

(a) There may be furnished to a person attending a school or camp established under section 9411 of this title, for travel to and from that school or camp—

(1) transportation and subsistence;

(2) transportation in kind and a subsistence allowance of one cent a mile; or

(3) a travel allowance of five cents a mile.

(b) The travel allowance for the return trip may be paid in advance.

(c) For the purposes of this section, distance is computed by the shortest usually traveled route, within such territorial limits as the Secretary of the Air Force may prescribe, from the authorized starting point to the school or camp and return.

(Aug. 10, 1956, ch. 1041, 70A Stat. 572.)

§ 9414. Quartermaster and ordnance property: sales

The Secretary of the Air Force may sell to a person attending a school or camp established under section 9411 of this title quartermaster and ordnance property necessary for his proper equipment. Sales under this section shall be for cash.

(Aug. 10, 1956, ch. 1041, 70A Stat. 572.)

§ 9415. Inter-American Air Forces Academy

(a) OPERATION.—The Secretary of the Air Force may operate the Air Force education and training facility known as the Inter-American Air Forces Academy for the purpose of providing military education and training to military personnel of Central and South American countries, Caribbean countries, and other countries eligible for assistance under chapter 5 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2347 et seq.).

(b) COSTS.—The fixed costs of operating and maintaining the Inter-American Air Forces Academy may be paid from funds available for operation and maintenance of the Air Force.

(Added P.L. 101–510, § 330, Nov. 5, 1990, 104 Stat. 1535.)

CHAPTER 909—CIVIL AIR PATROL [1]

Sec.
9441. Status as federally chartered corporation; purposes.
9442. Status as volunteer civilian auxiliary of the Air Force.
9443. Activities performed as federally chartered nonprofit corporation.
9444. Activities performed as auxiliary of the Air Force.
9445. Funds appropriated for the Civil Air Patrol.
9446. Miscellaneous personnel authorities.
9447. Board of Governors.
9448. Regulations.

§ 9441. Status as federally chartered corporation; purposes

(a) STATUS.—(1) The Civil Air Patrol is a nonprofit corporation that is federally chartered under section 40301 of title 36.

(2) Except as provided in section 9442(b)(2) of this title, the Civil Air Patrol is not an instrumentality of the Federal Government for any purpose.

(b) PURPOSES.—The purposes of the Civil Air Patrol are set forth in section 40302 of title 36.

(Aug. 10, 1956, ch. 1041, 70A Stat. 572; Sept. 8, 1980, P.L. 96–342, § 1007 (a), (b)(1), 94 Stat. 1121, 1122; Dec. 12, 1980, P.L. 96–513, § 514(12), 94 Stat. 2935; Oct. 19, 1984, P.L. 98–525, § 1533(a), 98 Stat. 2632; Nov. 8, 1985, P.L. 99–145, §§ 1303(a)(28), 1458(a), 99 Stat. 740, 763; Nov. 14, 1986, P.L. 99–661, § 1365(a), 100 Stat. 4002; Oct. 5, 1994, P.L. 103–337, § 1062, 108 Stat. 2847; Aug. 12, 1998, P.L. 105–225, § 4(a)(3), 112 Stat. 1499; revised in its entirety P.L. 106–398, § 1[1090(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–295.)

§ 9442. Status as volunteer civilian auxiliary of the Air Force

(a) VOLUNTEER CIVILIAN AUXILIARY.—The Civil Air Patrol is a volunteer civilian auxiliary of the Air Force when the services of the Civil Air Patrol are used by any department or agency in any branch of the Federal Government. [2]

(b) USE BY AIR FORCE.—(1) The Secretary of the Air Force may use the services of the Civil Air Patrol to fulfill the noncombat programs and missions of the Department of the Air Force.

(2) The Civil Air Patrol shall be deemed to be an instrumentality of the United States with respect to any act or omission of the Civil Air Patrol, including any member of the Civil Air Patrol, in carrying out a mission assigned by the Secretary of the Air Force.

(Added P.L. 98–525, § 1533(b), Oct. 19, 1984, 98 Stat. 2632; revised in its entirety P.L. 106–398, § 1[1090(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–295.)

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[1] Effective February 27, 2001, pursuant to section 1090(a) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654A–294), chapter 909 is amended in its entirety. This text shows the chapter as so amended.

[2] Section 3059(a) of the Defense Drug Interdiction Assistance Act (subtitle A of title III of P.L. 99–570; 100 Stat. 3207), as amended, provides:

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Civil Air Patrol, the all-volunteer civilian auxiliary of the Air Force, can increase its participation in and make significant contributions to the drug interdiction efforts of the Federal Government, and

(2) the Secretary of the Air Force should fully support that participation.

§ 9443. Activities performed as federally chartered nonprofit corporation

(a) USE OF FEDERALLY PROVIDED RESOURCES.—In its status as a federally chartered nonprofit corporation, the Civil Air Patrol may use equipment, supplies, and other resources, including aircraft, motor vehicles, computers, and communications equipment, provided to the Civil Air Patrol by a department or agency of the Federal Government or acquired by or for the Civil Air Patrol with appropriated funds (or with funds of the Civil Air Patrol, but reimbursed from appropriated funds)—

(1) to provide assistance requested by State or local governmental authorities to perform disaster relief missions and activities, other emergency missions and activities, and nonemergency missions and activities; and

(2) to fulfill its other purposes set forth in section 40302 of title 36.

(b) USE SUBJECT TO APPLICABLE LAWS.—The use of equipment, supplies, or other resources under subsection (a) is subject to the laws and regulations that govern the use by nonprofit corporations of federally provided assets or of assets purchased with appropriated funds, as the case may be.

(c) AUTHORITY NOT CONTINGENT ON REIMBURSEMENT.—The authority for the Civil Air Patrol to provide assistance under subsection (a)(1) is not contingent on the Civil Air Patrol being reimbursed for the cost of providing the assistance. If the Civil Air Patrol elects to require reimbursement for the provision of assistance under such subsection, the Civil Air Patrol may establish the reimbursement rate at a rate less than the rates charged by private sector sources for equivalent services.

(d) LIABILITY INSURANCE.—The Secretary of the Air Force may provide the Civil Air Patrol with funds for paying the cost of liability insurance to cover missions and activities carried out under this section.

(Added P.L. 106–398, § 1[1090(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–295.)

§ 9444. Activities performed as auxiliary of the Air Force

(a) AIR FORCE SUPPORT FOR ACTIVITIES.—The Secretary of the Air Force may furnish to the Civil Air Patrol in accordance with this section any equipment, supplies, and other resources that the Secretary determines necessary to enable the Civil Air Patrol to fulfill the missions assigned by the Secretary to the Civil Air Patrol as an auxiliary of the Air Force.

(b) FORMS OF AIR FORCE SUPPORT.—The Secretary of the Air Force may, under subsection (a)—

(1) give, lend, or sell to the Civil Air Patrol without regard to the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.)—

(A) major items of equipment (including aircraft, motor vehicles, computers, and communications equipment) that are excess to the military departments; and

(B) necessary related supplies and training aids that are excess to the military departments;

(2) permit the use, with or without charge, of services and facilities of the Air Force;

(3) furnish supplies (including fuel, lubricants, and other items required for vehicle and aircraft operations) or provide funds for the acquisition of supplies;

(4) establish, maintain, and supply liaison officers of the Air Force at the national, regional, State, and territorial headquarters of the Civil Air Patrol;

(5) detail or assign any member of the Air Force or any officer, employee, or contractor of the Department of the Air Force to any liaison office at the national, regional, State, or territorial headquarters of the Civil Air Patrol;

(6) detail any member of the Air Force or any officer, employee, or contractor of the Department of the Air Force to any unit or installation of the Civil Air Patrol to assist in the training programs of the Civil Air Patrol;

(7) authorize the payment of travel expenses and allowances, at rates not to exceed those paid to employees of the United States under subchapter I of chapter 57 of title 5, to members of the Civil Air Patrol while the members are carrying out programs or missions specifically assigned by the Air Force;

(8) provide funds for the national headquarters of the Civil Air Patrol, including—

(A) funds for the payment of staff compensation and benefits, administrative expenses, travel, per diem and allowances, rent, utilities, other operational expenses of the national headquarters; and

(B) to the extent considered necessary by the Secretary of the Air Force to fulfill Air Force requirements, funds for the payment of compensation and benefits for key staff at regional, State, or territorial headquarters;

(9) authorize the payment of expenses of placing into serviceable condition, improving, and maintaining equipment (including aircraft, motor vehicles, computers, and communications equipment) owned or leased by the Civil Air Patrol;

(10) provide funds for the lease or purchase of items of equipment that the Secretary determines necessary for the Civil Air Patrol;

(11) support the Civil Air Patrol cadet program by furnishing—

(A) articles of the Air Force uniform to cadets without cost; and

(B) any other support that the Secretary of the Air Force determines is consistent with Air Force missions and objectives; and

(12) provide support, including appropriated funds, for the Civil Air Patrol aerospace education program to the extent that the Secretary of the Air Force determines appropriate for furthering the fulfillment of Air Force missions and objectives.

(c) ASSISTANCE BY OTHER AGENCIES.—(1) The Secretary of the Air Force may arrange for the use by the Civil Air Patrol of such facilities and services under the jurisdiction of the Secretary of the Army, the Secretary of the Navy, or the head of any other depart-

ment or agency of the United States as the Secretary of the Air Force considers to be needed by the Civil Air Patrol to carry out its mission.

(2) An arrangement for use of facilities or services of a military department or other department or agency under this subsection shall be subject to the agreement of the Secretary of the military department or head of the other department or agency, as the case may be.

(3) Each arrangement under this subsection shall be made in accordance with regulations prescribed under section 9448 of this title.

(Added P.L. 106–398, § 1[1090(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–296.)

§ 9445. Funds appropriated for the Civil Air Patrol

Funds appropriated for the Civil Air Patrol shall be available only for the exclusive use of the Civil Air Patrol.

(Added P.L. 106–398, § 1[1090(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–297.)

§ 9446. Miscellaneous personnel authorities

(a) USE OF RETIRED AIR FORCE PERSONNEL.—(1) Upon the request of a person retired from service in the Air Force, the Secretary of the Air Force may enter into a personal services contract with that person providing for the person to serve as an administrator or liaison officer for the Civil Air Patrol. The qualifications of a person to provide the services shall be determined and approved in accordance with regulations prescribed under section 9448 of this title.

(2) To the extent provided in a contract under paragraph (1), a person providing services under the contract may accept services on behalf of the Air Force.

(3) A person, while providing services under a contract authorized under paragraph (1), may not be considered to be on active duty or inactive-duty training for any purpose.

(b) USE OF CIVIL AIR PATROL CHAPLAINS.—The Secretary of the Air Force may use the services of Civil Air Patrol chaplains in support of the Air Force active duty and reserve component forces to the extent and under conditions that the Secretary determines appropriate.

(Added P.L. 106–398, § 1[1090(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–297.)

§ 9447. Board of Governors

(a) GOVERNING BODY.—The Board of Governors of the Civil Air Patrol is the governing body of the Civil Air Patrol.

(b) COMPOSITION.—The Board of Governors is composed of 11 members as follows:

(1) Four members appointed by the Secretary of the Air Force, who may be active or retired officers of the Air Force (including reserve components of the Air Force), employees of the United States, or private citizens.

(2) Four members of the Civil Air Patrol, selected in accordance with the constitution and bylaws of the Civil Air Patrol.

(3) Three members appointed or selected as provided in subsection (c) from among personnel of any Federal Govern-

ment agencies, public corporations, nonprofit associations, and other organizations that have an interest and expertise in civil aviation and the Civil Air Patrol mission.

(c) APPOINTMENTS FROM INTERESTED ORGANIZATIONS.—(1) Subject to paragraph (2), the members of the Board of Governors referred to in subsection (b)(3) shall be appointed jointly by the Secretary of the Air Force and the National Commander of the Civil Air Patrol.

(2) Any vacancy in the position of a member referred to in paragraph (1) that is not filled under that paragraph within 90 days shall be filled by majority vote of the other members of the Board.

(d) CHAIRMAN.—The Chairman of the Board of Governors shall be chosen by the members of the Board of Governors from among the members of the Board referred to in paragraphs (1) and (2) of subsection (b) and shall serve for a term of two years. The position of Chairman shall be held on a rotating basis between members of the Board appointed by the Secretary of the Air Force under paragraph (1) of subsection (b) and members of the Board selected under paragraph (2) of that subsection.

(e) POWERS.—(1) The Board of Governors shall, subject to paragraphs (2) and (3), exercise the powers granted to the Civil Air Patrol under section 40304 of title 36.

(2) Any exercise by the Board of the power to amend the constitution or bylaws of the Civil Air Patrol or to adopt a new constitution or bylaws shall be subject to approval by a majority of the members of the Board.

(3) Neither the Board of Governors nor any other component of the Civil Air Patrol may modify or terminate any requirement or authority set forth in this section.

(f) PERSONAL LIABILITY FOR BREACH OF A FIDUCIARY DUTY.—(1) Subject to paragraph (2), the Board of Governors may take such action as is necessary to limit the personal liability of a member of the Board of Governors to the Civil Air Patrol, or to any of its members, for monetary damages for a breach of fiduciary duty while serving as a member of the Board.

(2) The Board may not limit the liability of a member of the Board of Governors to the Civil Air Patrol, or to any of its members, for monetary damages for any of the following:

(A) A breach of the member's duty of loyalty to the Civil Air Patrol or its members.

(B) Any act or omission that is not in good faith or that involves intentional misconduct or a knowing violation of law.

(C) Participation in any transaction from which the member directly or indirectly derives an improper personal benefit.

(3) Nothing in this subsection shall be construed as rendering section 207 or 208 of title 18 inapplicable in any respect to a member of the Board of Governors who is a member of the Air Force on active duty, an officer on a retired list of the Air Force, or an employee of the United States.

(g) PERSONAL LIABILITY FOR BREACH OF A FIDUCIARY DUTY.—(1) Except as provided in paragraph (2), no member of the Board of Governors or officer of the Civil Air Patrol shall be personally liable for damages for any injury or death or loss or damage of

property resulting from a tortious act or omission of an employee or member of the Civil Air Patrol.

(2) Paragraph (1) does not apply to a member of the Board of Governors or officer of the Civil Air Patrol for a tortious act or omission in which the member or officer, as the case may be, was personally involved, whether in breach of a civil duty or in commission of a criminal offense.

(3) Nothing in this subsection shall be construed to restrict the applicability of common law protections and rights that a member of the Board of Governors or officer of the Civil Air Patrol may have.

(4) The protections provided under this subsection are in addition to the protections provided under subsection (f).

(Added P.L. 106–398, § 1[1090(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–298.)

§ 9448. Regulations

(a) AUTHORITY.—The Secretary of the Air Force shall prescribe regulations for the administration of this chapter.

(b) REQUIRED REGULATIONS.—The regulations shall include the following:

(1) Regulations governing the conduct of the activities of the Civil Air Patrol when it is performing its duties as a volunteer civilian auxiliary of the Air Force under section 9442 of this title.

(2) Regulations for providing support by the Air Force and for arranging assistance by other agencies under section 9444 of this title.

(3) Regulations governing the qualifications of retired Air Force personnel to serve as an administrator or liaison officer for the Civil Air Patrol under a personal services contract entered into under section 9446(a) of this title.

(c) APPROVAL BY SECRETARY OF DEFENSE.—The regulations required by subsection (b)(2) shall be subject to the approval of the Secretary of Defense.

(Added P.L. 106–398, § 1[1090(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–299.)

PART IV—SERVICE, SUPPLY, AND PROCUREMENT

Chap.		Sec.
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CHAPTER 931—CIVIL RESERVE AIR FLEET

Sec.
[9501 to 9507. Repealed.]
9511. Definitions.
9512. Contracts for the inclusion or incorporation of defense features.
9513. Use of military installations by Civil Reserve Air Fleet contractors.
9514. Indemnification of Department of Transportation for losses covered by defense-related aviation insurance.

[§§ 9501–9507. Repealed. P.L. 103–160, §§ 822(a)(2), (b)(3), (c)(2), 823(1), 827(c), Nov. 30, 1993, 107 Stat. 1705, 1706, 1707, 1713]

§ 9511. Definitions

In this chapter:

(1) The terms "aircraft", "citizen of the United States", "civil aircraft", "person", and "public aircraft" have the meanings given those terms by section 40102(a) of title 49.

(2) The term "passenger-cargo combined aircraft" means a civil aircraft equipped so that its main deck can be used to carry both passengers and property (including mail) simultaneously.

(3) The term "cargo-capable aircraft" means a civil aircraft equipped so that all or substantially all of the aircraft's capacity can be used for the carriage of property or mail.

(4) The term "passenger aircraft" means a civil aircraft equipped so that its main deck can be used for the carriage of individuals and cannot be used principally, without major modification, for the carriage of property or mail.

(5) The term "cargo-convertible feature" means equipment or design features included or incorporated in a passenger aircraft that can readily enable all or substantially all of that aircraft's main deck to be used for the carriage of property or mail.

(6) The term "Civil Reserve Air Fleet" means those aircraft allocated, or identified for allocation, to the Department of Defense under section 101 of the Defense Production Act of 1950 (50 U.S.C. App. 2071), or made available (or agreed to be made available) for use by the Department of Defense under a contract made under this title, as part of the program developed by the Department of Defense through which the Department of Defense augments its airlift capability by use of civil aircraft.

(7) The term "contractor" means a citizen of the United States (A) who owns or controls, or who will own or control, a new or existing aircraft and who contracts with the Secretary under section 9512 of this title to modify that aircraft by including or incorporating specified defense features in that aircraft and to commit that aircraft to the Civil Reserve Air Fleet,

(B) who subsequently obtains ownership or control of a civil aircraft covered by such a contract and assumes all existing obligations under that contract, or (C) who owns or controls, or will own or control, new or existing aircraft and who, by contract, commits some or all of such aircraft to the Civil Reserve Air Fleet.

(8) The term "existing aircraft" means a civil aircraft other than a new aircraft.

(9) The term "new aircraft" means a civil aircraft that a manufacturer has not begun to assemble before the aircraft is covered by a contract under section 9512 of this title.

(10) The term "Secretary" means the Secretary of the Air Force.

(11) The term "defense feature" means equipment or design features included or incorporated in a civil aircraft which ensures the compatibility of such aircraft with the Department of Defense airlift system. Such term includes any equipment or design feature which enables such aircraft to be readily modified for use as an aeromedical aircraft or a cargo-convertible, cargo-capable, or passenger-cargo combined aircraft.

(Added P.L. 97–86, § 915(2), Dec. 1, 1981, 95 Stat. 1125, and amended P.L. 100–180, § 1231(17), Dec. 4, 1987, 101 Stat. 1161; P.L. 100–456, § 1233(k)(2), Sept. 29, 1988, 102 Stat. 2058; P.L. 101–189, § 1636(a), Nov. 29, 1989, 103 Stat. 1609; P.L. 103–272, § 5(b)(2), July 5, 1994, 108 Stat. 1373; P.L. 103–355, § 3031(a), Oct. 13, 1994, 108 Stat. 3334.)

§ 9512. Contracts for the inclusion or incorporation of defense features

(a) AUTHORITY TO CONTRACT.—Subject to the provisions of chapter 137 of this title, and to the extent that funds are otherwise available for obligation, the Secretary—

(1) may contract with any citizen of the United States for the inclusion or incorporation of defense features in any new or existing aircraft to be owned or controlled by that citizen; and

(2) may contract with United States aircraft manufacturers for the inclusion or incorporation of defense features in new aircraft to be operated by a United States air carrier.

(b) COMMITMENT TO CIVIL RESERVE AIR FLEET.—Each contract entered into under this section shall provide—

(1) that any aircraft covered by the contract shall be committed to the Civil Reserve Air Fleet;

(2) that, so long as the aircraft is owned or controlled by a contractor, the contractor shall operate the aircraft for the Department of Defense as needed during any activation of the Civil Reserve Air Fleet, notwithstanding any other contract or commitment of that contractor; and

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

(c) TERMS AND REQUIRED REPAYMENT.—Each contract entered into under subsection (a) shall include a provision that requires the contractor to repay to the United States a percentage (to be established in the contract) of any amount paid by the United States to the contractor under the contract with respect to any aircraft if—

(1) the aircraft is destroyed or becomes unusable, as defined in the contract;

(2) the defense features specified in the contract are rendered unusable or are removed from the aircraft;

(3) control over the aircraft is transferred to any person that is unable or unwilling to assume the contractor's obligations under the contract; or

(4) the registration of the aircraft under section 44103 of title 49 is terminated for any reason not beyond the control of the contractor.

(d) AUTHORITY TO CONTRACT AND PAY DIRECTLY.—(1) A contract under subsection (a) for the inclusion or incorporation of defense features in an aircraft may include a provision authorizing the Secretary—

(A) to contract, with the concurrence of the contractor, directly with another person for the performance of the work necessary for the inclusion or incorporation of defense features in such aircraft; and

(B) to pay such other person directly for such work.

(2) A contract entered into pursuant to paragraph (1) may include such specifications for work and equipment as the Secretary considers necessary to meet the needs of the United States.

(e) EXCLUSIVITY OF COMMITMENT TO CIVIL RESERVE AIR FLEET.—Notwithstanding section 101 of the Defense Production Act of 1950 (50 U.S.C. App. 2071), each aircraft covered by a contract entered into under this section shall be committed exclusively to the Civil Reserve Air Fleet for use by the Department of Defense as needed during any activation of the Civil Reserve Air Fleet unless the aircraft is released from that use by the Secretary of Defense.

(Added P.L. 97–86, § 915(2), Dec. 1, 1981, 95 Stat. 1126, and amended P.L. 98–525, § 1405(57) Oct. 19, 1984, 98 Stat. 2626; amended in entirety P.L. 101–189, § 1636(b), Nov. 29, 1989, 103 Stat. 1609; P.L. 103–272, § 5(b)(3), July 5, 1994, 108 Stat. 1373; P.L. 103–355, § 3032, Oct. 13, 1994, 108 Stat. 3334; P.L. 104–106, § 1087, Feb. 10, 1996, 110 Stat. 458.)

§ 9513. Use of military installations by Civil Reserve Air Fleet contractors

(a) CONTRACT AUTHORITY.—(1) The Secretary of the Air Force—

(A) may, by contract entered into with any contractor, authorize such contractor to use one or more Air Force installations designated by the Secretary; and

(B) with the consent of the Secretary of another military department, may, by contract entered into with any contractor, authorize the contractor to use one or more installations, designated by the Secretary of the Air Force, that is under the jurisdiction of the Secretary of such other military department.

(2) The Secretary of the Air Force may include in the contract such terms and conditions as the Secretary determines appropriate to promote the national defense or to protect the interests of the United States.

(b) PURPOSES OF USE.—A contract entered into under subsection (a) may authorize use of a designated installation as a weather alternate, as a technical stop not involving the enplaning or deplaning of passengers or cargo, or, in the case of an installa-

tion within the United States, for other commercial purposes. Notwithstanding any other provision of the law, the Secretary may establish different levels and types of uses for different installations for commercial operations not required by the Department of Defense and may provide in contracts under subsection (a) for different levels and types of uses by different contractors.

(c) DISPOSITION OF PAYMENTS FOR USE.—Notwithstanding any other provision of law, amounts collected from the contractor for landing fees, services, supplies, or other charges authorized to be collected under the contract shall be credited to the appropriations of the armed forces having jurisdiction over the military installation to which the contract pertains. Amounts so credited to an appropriation shall be available for obligation for the same period as the appropriation to which credited.

(d) HOLD HARMLESS REQUIREMENT.—A contract entered into under subsection (a) shall provide that the contractor agrees to indemnify and hold harmless the United States from any action, suit, or claim of any sort resulting from, relating to, or arising out of any activities conducted, or services or supplies furnished, in connection with the contract.

(e) RESERVATION OF RIGHT TO EXCLUDE CONTRACTOR.—A contract entered into under subsection (a) shall provide that the Secretary concerned may, without providing prior notice, deny access to an installation designated under the contract when the Secretary determines that it is necessary to do so in order to meet military exigencies.

(Added P.L. 103–355, § 3033, Oct. 13, 1994, 108 Stat. 3335 [former § 9513 transferred to § 9512(b), (e)].)

§ 9514. Indemnification of Department of Transportation for losses covered by defense-related aviation insurance

(a) PROMPT INDEMNIFICATION REQUIRED.—(1) In the event of a loss that is covered by defense-related aviation 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 an aircraft hull, not later than 30 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 defense-related aviation 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 an aircraft hull that is (or may be) covered by defense-related aviation 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 aircraft. Such payments shall commence not later than 30 days following the date of the presentment of the claim for

the loss of the aircraft hull 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 aviation 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) NOTICE TO CONGRESS.—In the event of a loss that is covered by defense-related aviation insurance in the case of an incident in which the covered loss is (or is expected to be) in an amount in excess of $1,000,000, the Secretary of Defense shall submit to Congress—

(1) 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; and

(2) 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 those funds, pending litigation, and estimated total cost to the Government.

(d) 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.

(e) 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.

(f) ANNUAL REPORT ON CONTINGENT LIABILITIES.—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 insurance program under chapter 443 of title 49.

(g) DEFINITIONS.—In this section:

(1) DEFENSE-RELATED AVIATION INSURANCE.—The term "defense-related aviation insurance" means aviation insurance and reinsurance provided through policies issued by the Secretary of Transportation under chapter 443 of title 49 that pursuant to section 44305(b) of that title is provided by that Sec-

retary 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) LOSS.—The term "loss" includes damage to or destruction of property, personal injury or death, and other liabilities and expenses covered by the defense-related aviation insurance.

(Added P.L. 104–201, § 1079(a)(1), Sept. 23, 1996, 110 Stat. 2667.)

CHAPTER 933—PROCUREMENT

Sec.
[9531. Repealed.]
9532. Factories, arsenals, and depots: manufacture at.
[9534, 9535. Repealed.]
9536. Equipment: bakeries, schools, kitchens, and mess halls.
[9537, 9538. Repealed.]
9540. Architectural and engineering services.
[9541. Repealed.]

[§ 9531. Repealed. P.L. 103–160, § 823(2), Nov. 30, 1993, 107 Stat. 1707]

§ 9532. Factories, arsenals, and depots: manufacture at

The Secretary of the Air Force may have supplies needed for the Department of the Air Force made in factories, arsenals, or depots owned by the United States, so far as those factories, arsenals, or depots can make those supplies on an economical basis.

(Aug. 10, 1956, ch. 1041, 70A Stat. 576.)

[§§ 9534 and 9535. Repealed. P.L. 103–160, § 823(4), (5), Nov. 30, 1993, 107 Stat. 1707]

§ 9536. Equipment: bakeries, schools, kitchens, and mess halls

Money necessary for the following items for the use of enlisted members of the Air Force may be spent from appropriations for regular supplies:

(1) Equipment for air base bakeries.

(2) Furniture, textbooks, paper, and equipment for air base schools.

(3) Tableware and mess furniture for kitchens and mess halls.

(Aug. 10, 1956, ch. 1041, 70A Stat. 576.)

[§§ 9537 and 9538. Repealed. P.L. 103–160, § 823(6), (7), Nov. 30, 1993, 107 Stat. 1707]

§ 9540. Architectural and engineering services

(a) Whenever he considers that it is advantageous to the national defense and that existing facilities of the Department of the Air Force are inadequate, the Secretary of the Air Force may, by contract or otherwise, employ the architectural or engineering services of any person outside that Department for producing and delivering designs, plans, drawings, and specifications needed for any public works or utilities project of the Department.

(b) The fee for any service under this section may not be more than 6 percent of the estimated cost, as determined by the Secretary, of the project to which it applies.

(c) Sections 305, 3324, and 7204, chapter 51, and subchapters III, IV, and VI of chapter 53 of title 5 do not apply to employment under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 577; Nov. 2, 1966, P.L. 89–718, § 28, 80 Stat. 1119; Oct. 13, 1978, P.L. 95–454, §§ 703(c)(3), 801(a)(3)(I), 92 Stat. 1217, 1222; Dec. 12, 1980, P.L. 96–513, § 514(15), 94 Stat. 2936.)

[§ 9541. Repealed. P.L. 103–160, § 822(d)(2), Nov. 30, 1993, 107 Stat. 1707]

CHAPTER 935—ISSUE OF SERVICEABLE MATERIAL TO ARMED FORCES

Sec.
9561. Rations.
9562. Clothing.
9563. Clothing: replacement when destroyed to prevent contagion.
9564. Navy and Marine Corps: camp equipment and transportation; when on shore duty with Air Force.
9565. Colors, standards, and guidons of demobilized organizations: disposition.

§ 9561. Rations

(a) The President may prescribe the components, and the quantities thereof, of the Air Force ration. He may direct the issue of equivalent articles in place of the prescribed components whenever, in his opinion, economy and the health and comfort of the members of the Air Force so require.

(b) An enlisted member of the Air Force on active duty is entitled to one ration daily. The emergency ration, when issued, is in addition to the regular ration.

(c) Fresh or preserved fruits, milk, butter, and eggs necessary for the proper diet of the sick in hospitals shall be provided under regulations approved by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 577.)

§ 9562. Clothing

The President may prescribe the quantity and kind of clothing to be issued annually to members of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 577.)

§ 9563. Clothing: replacement when destroyed to prevent contagion

The Secretary of the Air Force may order a gratuitous issue of clothing to any enlisted member of the Air Force who has had a contagious disease, and to any hospital attendant who attended him while he had that disease, to replace clothing destroyed by order of a medical officer to prevent contagion.

(Aug. 10, 1956, ch. 1041, 70A Stat. 577.)

§ 9564. Navy and Marine Corps: camp equipment and transportation; when on shore duty with Air Force

While any detachment of the Navy or Marine Corps is on shore duty in cooperation with troops of the Air Force, the Secretary of the Air Force shall, upon the requisition of the officer of the Navy or Marine Corps in command of the detachment, issue rations and camp equipment, and furnish transportation, to that detachment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 578.)

§ 9565. Colors, standards, and guidons of demobilized organizations: disposition

(a) The Secretary of the Air Force may dispose of colors, standards, and guidons of demobilized organizations of the Air Force, as follows:

(1) Those brought into Federal service by the Air National Guard of a State may be returned to that State upon the request of its governor.

(2) Those that cannot be returned under clause (1) may, upon the request of its governor, be sent to the State that, as determined by the Secretary, furnished the majority of members of the organization when it was formed.

Those that cannot be returned or sent under clause (1) or (2) of this subsection shall be delivered to the Secretary, for such national use as he may direct.

(b) Title to colors, standards, and guidons of demobilized organizations of the Air Force remains in the United States.

(c) No color, standard, or guidon may be disposed of under this section unless provision satisfactory to the Secretary has been made for its preservation and care.

(Aug. 10, 1956, ch. 1041, 70A Stat. 578.)

CHAPTER 937—UTILITIES AND SERVICES

Sec.
9591. Utilities: proceeds from overseas operations.
9592. Radiograms and telegrams: forwarding charges due connecting commercial facilities.
9593. Quarters: heat and light.
9594. Air Force Military History Institute: fee for providing historical information to the public.

§ 9591. Utilities: proceeds from overseas operations

During actual or threatened hostilities, proceeds from operating a public utility in connection with operations of the Air Force in the field overseas are available for that utility until the close of the fiscal year following that in which they are received.

(Aug. 10, 1956, ch. 1041, 70A Stat. 578.)

§ 9592. Radiograms and telegrams: forwarding charges due connecting commercial facilities

In the operation of telegraph lines, cables, or radio stations, members of the Air Force may, in the discretion of the Secretary of the Air Force, collect forwarding charges due connecting commercial telegraph or radio companies for sending radiograms or telegrams over their lines. Under such regulations as the Secretary may prescribe, they may present a voucher to a disbursing official for payment of the forwarding charge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 578; Sept. 13, 1982, P.L. 97–258, § 2(b)(1)(A), 96 Stat. 1052; Oct. 19, 1996, P.L. 104–316, § 105(e), 110 Stat. 3830.)

§ 9593. Quarters: heat and light

The heat and light necessary for the authorized quarters of members of the Air Force shall be furnished at the expense of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 578.)

§ 9594. Air Force Military History Institute: fee for providing historical information to the public

(a) AUTHORITY.—Except as provided in subsection (b), the Secretary of the Air Force may charge a person a fee for providing the person with information from the United States Air Force Military History Institute that is requested by that person.

(b) EXCEPTIONS.—A fee may not be charged under this section—

(1) to a person for information that the person requests to carry out a duty as a member of the armed forces or an officer or employee of the United States; or

(2) for a release of information under section 552 of title 5.

(c) LIMITATION ON AMOUNT.—A fee charged for providing information under this section may not exceed the cost of providing the information.

(d) RETENTION OF FEES.—Amounts received under subsection (a) for providing information in any fiscal year shall be credited to the appropriation or appropriations charged the costs of providing information to the public from the United States Air Force Military History Institute during that fiscal year.

(e) DEFINITIONS.—In this section:

(1) The term "United States Air Force Military History Institute" means the archive for historical records and materials of the Air Force that the Secretary of the Air Force designates as the primary archive for such records and materials.

(2) The terms "officer of the United States" and "employee of the United States" have the meanings given the terms "officer" and "employee", respectively, in sections 2104 and 2105, respectively, of title 5.

(Added P.L. 106–398, § 1[1085(c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–289.)

CHAPTER 939—SALE OF SERVICEABLE MATERIAL

Sec.
9621. Subsistence and other supplies: members of armed forces; veterans; executive or military departments and employees; prices.
9622. Rations: commissioned officers in field.
[9623. Repealed.]
9624. Medical supplies: civilian employees of the Air Force; American National Red Cross; Armed Forces Retirement Home.
9625. Ordnance property: officers of armed forces; civilian employees of Air Force; American National Red Cross; educational institutions; homes for veterans' orphans.
9626. Aircraft supplies and services: foreign military or air attaché.
9627. Supplies: educational institutions.
9628. Airplane parts and accessories: civilian flying schools.
9629. Proceeds: disposition.

§ 9621. Subsistence and other supplies: members of armed forces; veterans; executive or military departments and employees; prices

(a) The Secretary of the Air Force shall procure and sell, for cash or credit—

(1) articles designated by him, to members of the Air Force; and

(2) items of individual clothing and equipment, to officers of the Air Force, under such restrictions as the Secretary may prescribe.

An account of sales on credit shall be kept and the amount due reported to the Secretary. Except for articles and items acquired through the use of working capital funds under section 2208 of this title, sales of articles shall be at cost, and sales of individual clothing and equipment shall be at average current prices, including overhead, as determined by the Secretary.

(b) The Secretary shall sell subsistence supplies to members of other armed forces at the prices at which like property is sold to members of the Air Force.

(c) The Secretary may sell serviceable quartermaster property, other than subsistence supplies, to an officer of another armed force for his use in the service, in the same manner as these articles are sold to an officer of the Air Force.

(d) A person who has been discharged honorably or under honorable conditions from the Army, Navy, Air Force, or Marine Corps and who is receiving care and medical treatment from the Public Health Service or the Department of Veterans Affairs may buy subsistence supplies and other supplies, except articles of uniform, at the prices at which like property is sold to a member of the Air Force.

(e) Under such conditions as the Secretary may prescribe, exterior articles of uniform may be sold to a person who has been discharged from the Air Force honorably or under honorable conditions, at the prices at which like articles are sold to members of

the Air Force. This subsection does not modify section 772 or 773 of this title.

(f) Whenever, under regulations to be prescribed by the Secretary, subsistence supplies are furnished to any organization of the Air Force or sold to employees of any executive department other than the Department of Defense, payment shall be made in cash or by commercial credit.

(g) The Secretary may, by regulation, provide for the procurement and sale of stores designated by him to such civilian officers and employees of the United States, and such other persons, as he considers proper—

(1) at military installations outside the United States; and

(2) at military installations inside the United States where he determines that it is impracticable for those civilian officers, employees, and persons to obtain those stores from private agencies without impairing the efficient operation of military activities.

However, sales to those officers and employees inside the United States may be made only to those residing within military installations.

(h) Appropriations for subsistence of the Air Force may be applied to the purchase of subsistence supplies for sale to members of the Air Force on active duty for the use of themselves and their families.

(Aug. 10, 1956, ch. 1041, 70A Stat. 579; Sept. 7, 1962, P.L. 87–651, § 118, 76 Stat. 513; Dec. 12, 1980, P.L. 96–513, § 514(16), 94 Stat. 2936; July 10, 1981, P.L. 97–22, § 11(a)(11), 95 Stat. 138; Dec. 4, 1987, P.L. 100–180, § 313(b), 101 Stat. 1074; Nov. 29, 1989, P.L. 101–189, § 1621(a)(1), 103 Stat. 1602; Feb. 10, 1996, P.L. 104–106, § 375(b)(2), 110 Stat. 283.)

§ 9622. Rations: commissioned officers in field

Commissioned officers of the Air Force serving in the field may buy rations for their own use, on credit. Amounts due for these purchases shall be reported monthly to the Secretary of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 580.)

[§ 9623. Repealed. P.L. 105–261, § 366(a), Oct. 17, 1998, 112 Stat. 1987]

§ 9624. Medical supplies: civilian employees of the Air Force; American National Red Cross; Armed Forces Retirement Home

(a) Under regulations to be prescribed by the Secretary of the Air Force, a civilian employee of the Department of the Air Force who is stationed at an air base may buy necessary medical supplies from the Air Force when they are prescribed by a medical officer on active duty.

(b) The Secretary may sell medical supplies to the American National Red Cross for cash.

(c) The Secretary may sell medical and hospital supplies to the Armed Forces Retirement Home.

(Aug. 10, 1956, ch. 1041, 70A Stat. 580; Dec. 12, 1980, P.L. 96–513, § 514(17)(A), (B), 94 Stat. 2936; Nov. 5, 1990, P.L. 101–510, § 1553(a)(8), 104 Stat. 1735.)

§ 9625. Ordnance property: officers of armed forces; civilian employees of Air Force; American National Red Cross; educational institutions; homes for veterans' orphans

(a) The Secretary of the Air Force may sell articles of ordnance property to officers of other armed forces for their use in the service, in the same manner as these articles are sold to officers of the Air Force.

(b) Under such regulations as the Secretary may prescribe, ordnance stores may be sold to civilian employees of the Air Force and to the American National Red Cross.

(c) Articles of ordnance property may be sold to educational institutions and to State soldiers' and sailors' orphans' homes for maintaining the ordnance and ordnance stores issued to those institutions and homes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 580.)

§ 9626. Aircraft supplies and services: foreign military or air attaché

Under such conditions as he may prescribe, the Secretary of the Air Force may provide for the sale of fuel, oil, and other supplies for use in aircraft operated by a foreign military or air attaché accredited to the United States, and for the furnishing of mechanical service and other assistance to such aircraft. Shelter may be furnished to such aircraft, but only without charge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 581.)

§ 9627. Supplies: educational institutions

Under such regulations as the Secretary of the Air Force may prescribe, supplies and military publications procured for the Air Force may be sold to any educational institution to which an officer of the Air Force is detailed as professor of air science and tactics, for the use of its military students. Sales under this section shall be for cash.

(Aug. 10, 1956, ch. 1041, 70A Stat. 581.)

§ 9628. Airplane parts and accessories: civilian flying schools

The Secretary of the Air Force may sell, to civilian flying schools at which personnel of the Department of the Air Force or the Department of the Army are receiving flight training under contracts requiring these schools to maintain and repair airplanes of the Air Force furnished to them for flight training, the spare parts and accessories needed for those repairs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 581.)

§ 9629. Proceeds: disposition

The proceeds of sales of the following shall be paid into the Treasury to the credit of the appropriation out of which they were purchased, and are available for the purposes of that appropriation:

(1) Exterior articles of uniform sold under section 9621 of this title.

(2) Supplies, war material, and military publications sold to educational institutions under section 9627 of this title.

(3) Fuel, oil, other supplies, and services for aircraft of a foreign military or air attache sold under section 9626 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 581.)

CHAPTER 941—ISSUE OF SERVICEABLE MATERIAL OTHER THAN TO ARMED FORCES

Sec.
9651. Arms, tentage, and equipment: educational institutions not maintaining units of A.F.R.O.T.C.
9652. Rifles and ammunition for target practice: educational institutions having corps of cadets.
9653. Ordnance and ordnance stores: District of Columbia high schools.
9654. Supplies: military instruction camps.
9655. Arms and ammunition: agencies and departments of United States.
9656. Aircraft and equipment: civilian aviation schools.

§ 9651. Arms, tentage, and equipment: educational institutions not maintaining units of A.F.R.O.T.C.

Under such conditions as he may prescribe, the Secretary of the Air Force may issue arms, tentage, and equipment that he considers necessary for proper military training, to any educational institution at which no unit of the Air Force Reserve Officers' Training Corps is maintained, but which has a course in military training prescribed by the Secretary and which has at least 100 physically fit students over 14 years of age.

(Aug. 10, 1956, ch. 1041, 70A Stat. 581; Nov. 8, 1985, P.L. 99–145, § 1301(d)(3), 99 Stat. 736.)

§ 9652. Rifles and ammunition for target practice: educational institutions having corps of cadets

(a) The Secretary of the Air Force may lend, without expense to the United States, magazine rifles and appendages that are not of the existing service models in use at the time, and that are not necessary for a proper reserve supply, to any educational institution having a uniformed corps of cadets of sufficient number for target practice. He may also issue 40 rounds of ball cartridges for each cadet for each range at which target practice is held, but not more than 120 rounds each year for each cadet participating in target practice.

(b) The institutions to which property is lent under subsection (a) shall use it for target practice, take proper care of it, and return it when required.

(c) The Secretary shall prescribe regulations to carry out this section, containing such other requirements as he considers necessary to safeguard the interests of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 582.)

§ 9653. Ordnance and ordnance stores: District of Columbia high schools

The Secretary of the Air Force, under regulations to be prescribed by him, may issue to the high schools of the District of Columbia ordnance and ordnance stores required for military instruction and practice. 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, except for property properly expended, for its return when required.

(Aug. 10, 1956, ch. 1041, 70A Stat. 582.)

§ 9654. Supplies: military instruction camps

Under such conditions as he may prescribe, the Secretary of the Air Force may issue, to any educational institution at which an Air Force officer is detailed as professor of air science and tactics, such supplies as are necessary to establish and maintain a camp for the military instruction of its students. The Secretary shall require a bond in the value of the property issued under this section, for the care and safekeeping of that property and, except for property properly expended, for its return when required.

(Aug. 10, 1956, ch. 1041, 70A Stat. 582.)

§ 9655. Arms and ammunition: agencies and departments of United States

(a) Whenever required for the protection of public money and property, the Secretary of the Air Force may lend arms and their accouterments, and issue ammunition, to a department or independent agency of the United States, upon request of its head. Property lent or issued under this subsection may be delivered to an officer of the department or agency designated by the head thereof, and that officer shall account for the property to the Secretary of the Air Force. Property lent or issued under this subsection and not properly expended shall be returned when it is no longer needed.

(b) The department or agency to which property is lent or issued under subsection (a) shall transfer funds to the credit of the Department of the Air Force to cover the costs of—

(1) ammunition issued;

(2) replacing arms and accouterments that have been lost or destroyed or cannot be repaired;

(3) repairing arms and accouterments returned to the Department of the Air Force; and

(4) making and receiving shipments by the Department of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 582.)

§ 9656. Aircraft and equipment: civilian aviation schools

The Secretary of the Air Force, under regulations to be prescribed by him, may lend aircraft, aircraft parts, and aeronautical equipment and accessories that are required for instruction, training, and maintenance, to accredited civilian aviation schools at which personnel of the Department of the Air Force or the Department of the Army are pursuing a course of instruction and training under detail by competent orders.

(Aug. 10, 1956, ch. 1041, 70A Stat. 583; Oct. 12, 1982, P.L. 97–295, § 1(53), 96 Stat. 1301.)

CHAPTER 943—DISPOSAL OF OBSOLETE OR SURPLUS MATERIAL

Sec.
9681. Surplus war material: sale to States and foreign governments.
9682. Obsolete or excess material: sale to National Council of Boy Scouts of America.
9684. Surplus obsolete ordnance: sale to patriotic organizations.
9685. Obsolete ordnance: loan to educational institutions and State soldiers' and sailors' orphans' homes.
9686. Obsolete ordnance: gift to State homes for soldiers and sailors.

§ 9681. Surplus war material: sale to States and foreign governments

Subject to regulations under section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486), the Secretary of the Air Force may sell surplus war material and supplies, except food, of the Department of the Air Force, for which there is no adequate domestic market, to any State or to any foreign government with which the United States was at peace on June 5, 1920. Sales under this section shall be made upon terms that the Secretary considers expedient.

(Aug. 10, 1956, ch. 1041, 70A Stat. 583; Dec. 12, 1980, P.L. 96–513, § 514(18), 94 Stat. 2936.)

§ 9682. Obsolete or excess material: sale to National Council of Boy Scouts of America

Subject to regulations under section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486), the Secretary of the Air Force, under such conditions as he may prescribe, may sell obsolete or excess material to the National Council of the Boy Scouts of America. Sales under this section shall be at fair value to the Department of the Air Force, including packing, handling, and transportation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 583; Dec. 12, 1980, P.L. 96–513, § 514(18), 94 Stat. 2936.)

§ 9684. Surplus obsolete ordnance: sale to patriotic organizations

Subject to regulations under section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486), the Secretary of the Air Force may sell, without advertisement and at prices that he considers reasonable—

(1) surplus obsolete small arms and ammunition and equipment for them, to any patriotic organization for military purposes; and

(2) surplus obsolete brass or bronze cannons, carriages, and cannon balls, for public parks, public buildings, and soldiers' monuments.

(Aug. 10, 1956, ch. 1041, 70A Stat. 583; Dec. 12, 1980, P.L. 96–513, § 514(18), 94 Stat. 2936.)

§ 9685. Obsolete ordnance: loan to educational institutions and State soldiers' and sailors' orphans' homes

(a) Upon the recommendation of the Governor of the State or Territory concerned, the Secretary of the Air Force, under regulations to be prescribed by him and without cost to the United States for transportation, may lend obsolete ordnance and ordnance stores to State and Territorial educational institutions and to State soldiers' and sailors' orphans' homes, for drill and instruction. However, no loan may be made under this subsection to an institution to which ordnance or ordnance stores may be issued under any law that was in effect on June 30, 1906, and is still in effect.

(b) The Secretary shall require a bond from each institution or home to which property is lent under subsection (a), in double the value of the property lent, for the care and safekeeping of that property and, except for property properly expended, for its return when required.

(Aug. 10, 1956, ch. 1041, 70A Stat. 584.)

§ 9686. Obsolete ordnance: gift to State homes for soldiers and sailors

Subject to regulations under section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486), the Secretary of the Air Force may give not more than two obsolete bronze or iron cannons suitable for firing salutes to any home for soldiers or sailors established and maintained under State authority.

(Aug. 10, 1956, ch. 1041, 70A Stat. 584; Dec. 12, 1980, P.L. 96–513, § 514(18), 94 Stat. 2936.)

CHAPTER 945—DISPOSITION OF EFFECTS OF DECEASED PERSONS

Sec.
[9711 Repealed.]
9712. Disposition of effects of deceased persons by summary court-martial.
[9713. Repealed.]

[§ 9711. Repealed. P.L. 106–65, § 721(b), Oct. 5, 1999, 113 Stat. 694].

§ 9712. Disposition of effects of deceased persons by summary court-martial

(a) Upon the death of—

(1) a person subject to military law at a place or command under the jurisdiction of the Air Force; or

(2) a resident of the Armed Forces Retirement Home who dies in an Air Force hospital outside the District of Columbia when sent from the Home to that hospital for treatment;

the commanding officer of the place or command shall permit the legal representative or the surviving spouse of the deceased, if present, to take possession of the effects of the deceased that are then at the air base or in quarters.

(b) If there is no legal representative or surviving spouse present, the commanding officer shall direct a summary court-martial to collect the effects of the deceased that are then at the air base or in quarters.

(c) The summary court-martial may collect debts due the decedent's estate by local debtors, pay undisputed local creditors of the deceased to the extent permitted by money of the deceased in the court's possession, and shall take receipts for those payments, to be filed with the court's final report to the Department of the Air Force.

(d) As soon as practicable after the collection of the effects and money of the deceased, the summary court-martial shall send them at the expense of the United States to the living person highest on the following list who can be found by the court:

(1) The surviving spouse or legal representative.

(2) A child of the deceased.

(3) A parent of the deceased.

(4) A brother or sister of the deceased.

(5) The next-of-kin of the deceased.

(6) A beneficiary named in the will of the deceased.

(e) If the summary court-martial cannot dispose of the effects under subsection (d) because there are no persons in those categories or because the court finds that the addresses of the persons are not known or readily ascertainable, the court may convert the effects of the deceased, except sabers, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly

as keepsakes, into cash, by public or private sale, but not until 30 days after the date of death of the deceased.

(f) As soon as practicable after the effects have been converted into cash under subsection (e), the summary court-martial shall deposit all cash in the court's possession and belonging to the estate with the officer designated in regulations, and shall send a receipt therefor, together with any will or other papers of value, an inventory of the effects and articles not permitted to be sold, to the executive part of the Department of the Air Force. The Secretary of the Air Force shall deliver to the Armed Forces Retirement Home all items received by the executive part of the Department of the Air Force under this subsection.

(g) [Repealed. P.L. 104–316, § 202(g), Oct. 19, 1996, 110 Stat. 3842.]

(Aug. 10, 1956, ch. 1041, 70A Stat. 585; Nov. 2, 1966, P.L. 89–718, § 48, 80 Stat. 1121; Dec. 12, 1980, P.L. 96–513, § 514(19), 94 Stat. 2936; Nov. 8, 1985, P.L. 99–145, § 1301(d)(4)(A), 99 Stat. 736; Nov. 5, 1990, P.L. 101–510, § 1533(a)(9)(A), (B), 104 Stat. 1735; P.L. 104–316, § 202(g), Oct. 19, 1996, 110 Stat. 3842.)

[§ 9713. Repealed. P.L. 101–510, § 1553(a)(10), Nov. 5, 1990, 104 Stat. 1735]

CHAPTER 947—TRANSPORTATION

Sec.
9741. Control and supervision.
[9742. Repealed.]
9743. Officers: use of transportation.
9746. Civilian personnel in Alaska.
[9748. Repealed.]

§ 9741. Control and supervision

The transportation of members, munitions of war, equipment, military property, and stores of the Air Force throughout the United States shall be under the immediate control and supervision of the Secretary of the Air Force and agents appointed or designated by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 587.)

[§ 9742. Repealed. P.L. 104–201, § 906(c), Sept. 23, 1996, 110 Stat. 2620]

§ 9743. Officers: use of transportation

Under such conditions as the Secretary of the Air Force may prescribe, officers of the Air Force may, in the performance of their duties, use means of transportation provided for the Air Force and its supplies.

(Aug. 10, 1956, ch. 1041, 70A Stat. 587.)

§ 9746. 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 airplanes operated by Air Force transport agencies or, within bulk space allocations made to the Department of the Air Force, on vessels or airplanes operated by any military transport agency of the Department of Defense, if—

(1) the Secretary of the Air Force 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—

(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 be reasonably handled by a United States commercial air carrier.

(Aug. 10, 1956, ch. 1041, 70A Stat. 587; Oct. 3, 1984, P.L. 98–443, § 9(K), 98 Stat. 1708.)

[§ 9748. Repealed. P.L. 87–651, § 129(1), Sept. 7, 1962, 76 Stat. 514]

CHAPTER 949—REAL PROPERTY

Sec.
9771. Acceptance of donations: land for mobilization, training, supply base, or aviation field.
[9772. Repealed.]
9773. Acquisition and construction: air bases and depots.
[9774, 9775. Repealed.]
9776. Emergency construction: fortifications.
9777. Permits: military reservations; landing ferries, erecting bridges, driving livestock.
9778. Licenses: military reservations; erection and use of buildings; Young Men's Christian Association.
9779. Use of public property.
9780. Acquisition of buildings in District of Columbia.
9781. Disposition of real property at missile sites.
9782. Maintenance and repair of real property.
9783. Johnston Atoll: reimbursement for support provided to civil air carriers.

§ 9771. Acceptance of donations: land for mobilization, training, supply base, or aviation field

The Secretary of the Air Force may accept for the United States a gift of—

(1) land that he considers suitable and desirable for a permanent mobilization, training, or supply base; and

(2) land that he considers suitable and desirable for an aviation field, if the gift is from a citizen of the United States and its terms authorize the use of the property by the United States for any purpose.

(Aug. 10, 1956, ch. 1041, 70A Stat. 588.)

[§ 9772. Repealed. P.L. 94–579, § 704(a), Oct 21, 1976, 90 Stat. 2792]

§ 9773. Acquisition and construction: air bases and depots

(a) The Secretary of the Air Force shall determine the sites of such additional permanent air bases and depots in all strategic areas of the United States and the Territories, Commonwealths, possessions, and holdings as he considers necessary. He shall determine when the enlargement of existing air bases and depots is necessary for the effective peacetime training of the Air Force.

(b) In determining the sites of new air bases and depots, the Secretary shall consider the following regions for the purposes indicated—

(1) the Atlantic northeast, for training in cold weather and in fog;

(2) the Atlantic southeast and Caribbean areas, for training in long-range operations, especially those incident to reinforcing the defenses of the Panama Canal;

(3) the southeastern United States, to provide a depot necessary to maintain the Air Force;

(4) the Pacific northwest, to establish and maintain air communication with Alaska;

(5) Alaska, for training under conditions of extreme cold;

(6) the Rocky Mountain area, to provide a depot necessary to maintain the Air Force, and for training in operations from fields in high altitudes; and

(7) other regions, for the establishment of intermediate air bases to provide for transcontinental movements of the Air Force for maneuvers.

(c) In selecting sites for air bases and depots covered by this section and in determining the alteration or enlargement of existing air bases or depots, the Secretary shall consider the need—

(1) to form the nucleus for concentration of Air Force units in time of war;

(2) to permit, in time of peace, training and effective planning in each strategic area for the use and expansion of commercial, municipal, and private flying installations in time of war;

(3) to locate, in each strategic area in which it is considered necessary, adequate storage facilities for munitions and other articles necessary to facilitate the movement, concentration, maintenance, and operation of the Air Force; and

(4) to afford the maximum warning against surprise attack by enemy aircraft upon aviation of the United States and its necessary installations consistent with maintaining, in connection with existing or contemplated landing fields, the full power of the Air Force for operations necessary in the defense of the United States, and in the defense and reinforcement of the Territories, Commonwealths, possessions, and holdings.

(d) In carrying out this section, the Secretary, on behalf of the United States, may acquire title, in fee simple and free of encumbrance, to any land that he considers necessary—

(1) by accepting title without cost to the United States;

(2) by exchanging military reservations or parts thereof for that land, upon the written approval of the President; or

(3) by purchase or condemnation, if acquisition by gift or exchange is impracticable.

(e) The Secretary may, by purchase, gift, lease, or otherwise, acquire at desired locations bombing and machine gun ranges necessary for practice by, and the training of, tactical units.

(f) At each air base or depot established under this section, the Secretary shall remove or remodel existing structures as necessary; do necessary grading; and provide buildings, utilities, communication systems, landing fields and mats, roads, walks, aprons, docks, runways, facilities for the storage and distribution of ammunition, fuel, oil, necessary protection against bombs, and all appurtenances to the foregoing.

(g) The Secretary may direct the transportation of personnel, and the purchase, renovation, and transportation of material, that he considers necessary to carry out this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 588.)

[§ 9774. Repealed. P.L. 97–214, § 7(1), July 12, 1982, 96 Stat. 173]

[§ 9775. Repealed. P.L. 92–145, § 509(b), Oct. 27, 1971, 85 Stat. 408]

§ 9776. Emergency construction: fortifications

If in an emergency the President considers it urgent, a temporary air base or fortification may be built on private land if the owner consents in writing.

(Aug. 10, 1956, ch. 1041, 70A Stat. 591; Sept. 1, 1970, P.L. 91–393, § 5, 84 Stat. 835.)

§ 9777. Permits: military reservations; landing ferries, erecting bridges, driving livestock

Whenever the Secretary of the Air Force considers that it can be done without injury to the reservation or inconvenience to the military forces stationed there, he may permit—

(1) the landing of ferries at a military reservation;
(2) the erection of bridges on a military reservation; and
(3) the driving of livestock across a military reservation.

(Aug 10, 1956, ch 1041, 70A Stat. 591.)

§ 9778. Licenses: military reservations; erection and use of buildings; Young Men's Christian Association

Under such conditions as he may prescribe, the Secretary of the Air Force may issue a revocable license to the International Committee of Young Men's Christian Associations of North America to erect and maintain, on military reservations within the United States and the Territories, Commonwealths, and possessions, buildings needed by that organization for the promotion of the social, physical, intellectual, and moral welfare of the members of the Air Force on those reservations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 591.)

§ 9779. Use of public property

(a) When the economy of the Air Force so requires, the Secretary of the Air Force shall establish military headquarters in places where suitable buildings are owned by the United States.

(b) No money appropriated for the support of the Air Force may be spent for base gardens or Air Force exchanges. However, this does not prevent Air Force exchanges from using public buildings or public transportation that, in the opinion of the Secretary, are not needed for other purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 591; Nov. 14, 1986, P.L. 99–661, § 2721, 100 Stat. 4042.)

§ 9780. Acquisition of buildings in District of Columbia

(a) In time of war or when war is imminent, the Secretary of the Air Force may acquire by lease any building, or part of a building, in the District of Columbia that may be needed for military purposes.

(b) At any time, the Secretary may, for the purposes of the Department of the Air Force, requisition the use and take possession of any building or space in any building, and its appurtenances, in the District of Columbia, other than—

(1) a dwelling house occupied as such;

(2) a building occupied by any other agency of the United States; or

(3) space in such a dwelling house or building.

The Secretary shall determine, and pay out of funds appropriated for the payment of rent by the Department of the Air Force, just compensation for that use. If the amount of the compensation is not satisfactory to the person entitled to it, the Secretary shall pay 75 percent of it to that person, and the claimant is entitled to recover by action against the United States an additional amount that, when added to the amount paid by the Secretary, is determined by the court to be just compensation for that use.

(Added P.L. 85–861, § 1(203)(A), Sept. 2, 1958, 72 Stat. 1542.)

§ 9781. Disposition of real property at missile sites

(a)(1) The Administrator of General Services shall dispose of the interest of the United States in any tract of real property described in paragraph (2) or in any easement held in connection with any such tract of real property only as provided in this section.

(2) The real property referred to in paragraph (1) is any tract of land (including improvements thereon) owned by the Air Force that—

(A) is not required for the needs of the Air Force and the discharge of the responsibilities of the Air Force, as determined by the Secretary of the Air Force;

(B) does not exceed 25 acres;

(C) was used by the Air Force as a site for one or more missile launch facilities, missile launch control buildings, or other facilities to support missile launch operations; and

(D) is surrounded by lands that are adjacent to such tract and that—

(i) are owned in fee simple by one owner, either individually or by more than one person jointly, in common, or by the entirety; or

(ii) are owned separately by two or more owners.

(b)(1)(A) Whenever the interest of the United States in a tract of real property or easement referred to in subsection (a) is available for disposition under this section, the Administrator shall transmit a notice of the availability of the real property or easement to each person described in subsection (a)(2)(D)(i) who owns lands adjacent to that real property or easement.

(B) The Administrator shall convey, for fair market value, the interest of the United States in a tract of land referred to in subsection (a), or in any easement in connection with such a tract of land, to any person or persons described in subsection (a)(2)(D)(i) who, with respect to such land, are ready, willing, and able to purchase such interest for the fair market value of such interest.

(2)(A) In the case of a tract of real property referred to in subsection (a) that is surrounded by adjacent lands that are owned separately by two or more owners, the Administrator shall dispose of that tract of real property in accordance with this paragraph. In disposing of the real property, the Administrator shall satisfy the requirements specified in paragraph (1) regarding notice to owners,

sale at fair market value, and the determination of the qualifications of the purchaser.

(B) The Administrator shall dispose of such a tract of real property through a sealed bid competitive sale. The Administrator shall afford an opportunity to compete to acquire the interest of the United States in the real property to all of the persons described in subsection (a)(2)(D)(ii) who own lands adjacent to that real property. The Administrator shall restrict to these persons the opportunity to compete in the sealed bid competitive sale.

(C) Subject to subparagraph (D), the Administrator shall convey the interest of the United States in the tract of real property to the highest bidder.

(D) If all of the bids received by the Administrator in the sealed bid competitive sale of the tract of real property are less than the fair market value of the real property, the Administrator shall dispose of the real property in accordance with the provisions of title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.).

(c) The Administrator shall determine the fair market value of the interest of the United States to be conveyed under this section.

(d) The requirement to determine whether any tract of land described in subsection (a)(2) is excess property or surplus property under title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.) before disposing of such tract shall not be applicable to the disposition of such tract under this section.

(e) The disposition of a tract of land under this section to any person shall be subject to (1) any easement retained by the Secretary of the Air Force with respect to such tract, and (2) such additional terms and conditions as the Administrator considers necessary or appropriate to protect the interests of the United States.

(f) The exact acreage and legal description of any tract of land to be conveyed under this section shall be determined in any manner that is satisfactory to the Administrator. The cost of any survey conducted for the purpose of this subsection in the case of any tract of land shall be borne by the person or persons to whom the conveyance of such tract of land is made.

(g) If any real property interest of the United States described in subsection (a) is not purchased under the procedures provided in subsections (a) through (f), such tract may be disposed of only in accordance with the Federal Property and Administrative Services Act of 1949.

(Added P.L. 100–180, § 2325(a), Dec. 4, 1987, 101 Stat. 1220; amended P.L. 103–160, § 2851, Nov. 30, 1993, 107 Stat. 1907.)

§ 9782. Maintenance and repair of real property

(a) ALLOCATION OF FUNDS.—The Secretary of the Air Force shall allocate funds authorized to be appropriated by a provision described in subsection (c) and a provision described in subsection (d) for maintenance and repair of real property at military installations of the Department of the Air Force without regard to whether the installation is supported with funds authorized by a provision described in subsection (c) or (d).

(b) MIXING OF FUNDS PROHIBITED ON INDIVIDUAL PROJECTS.—The Secretary of the Air Force may not combine funds authorized to be appropriated by a provision described in subsection (c) and funds authorized to be appropriated by a provision described in subsection (d) for an individual project for maintenance and repair of real property at a military installation of the Department of the Air Force.

(c) RESEARCH, DEVELOPMENT, TEST, AND EVALUATION FUNDS.—The provision described in this subsection is a provision of a national defense authorization Act that authorizes funds to be appropriated for a fiscal year to the Air Force for research, development, test, and evaluation.

(d) OPERATION AND MAINTENANCE FUNDS.—The provision described in this subsection is a provision of a national defense authorization Act that authorizes funds to be appropriated for a fiscal year to the Air Force for operation and maintenance.

(Added P.L. 105–85, § 242(a), Nov. 18, 1997, 111 Stat. 1666.)

§ 9783. Johnston Atoll: reimbursement for support provided to civil air carriers

(a) AUTHORITY OF THE SECRETARY.—The Secretary of the Air Force may, under regulations prescribed by the Secretary, require payment by a civil air carrier for support provided by the United States to the carrier at Johnston Atoll that is either—

(1) requested by the civil air carrier; or

(2) determined under the regulations as being necessary to accommodate the civil air carrier's use of Johnston Atoll.

(b) AMOUNT OF CHARGES.—Any amount charged an air carrier under subsection (a) for support shall be equal to the total amount of the actual costs to the United States of providing the support. The amount charged may not include any amount for an item of support that does not satisfy a condition described in paragraph (1) or (2) of subsection (a).

(c) RELATIONSHIP TO LANDING FEES.—No landing fee shall be charged an air carrier for a landing of an aircraft of the air carrier at Johnston Atoll if the air carrier is charged under subsection (a) for support provided to the air carrier.

(d) DISPOSITION OF PAYMENTS.—(1) Amounts collected from an air carrier under this section shall be credited to appropriations available for the fiscal year in which collected, as follows:

(A) For support provided by the Air Force, to appropriations available for the Air Force for operation and maintenance.

(B) For support provided by the Army, to appropriations available for the Army for chemical demilitarization.

(2) Amounts credited to an appropriation under paragraph (1) shall be merged with funds in that appropriation and shall be available, without further appropriation, for the purposes and period for which the appropriation is available.

(e) DEFINITIONS.—In this section:

(1) The term "civil air carrier" means an air carrier (as defined in section 40101(a)(2) of title 49) that is issued a certificate of public convenience and necessity under section 41102 of such title.

(2) The term "support" includes fuel, fire rescue, use of facilities, improvements necessary to accommodate use by civil air carriers, police, safety, housing, food, air traffic control, suspension of military operations on the island (including operations at the Johnston Atoll Chemical Agent Demilitarization System), repairs, and any other construction, services, or supplies.

(Added P.L. 106–398, § 1[383(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–86.)

CHAPTER 951—MILITARY CLAIMS

Sec.
9801. Definition.
9802. Admiralty claims against the United States.
9803. Admiralty claims by United States.
9804. Salvage claims by United States.
[9805. Repealed.]
9806. Settlement or compromise: final and conclusive.

§ 9801. Definition

In this chapter, the term "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. 591; Dec. 4, 1987, P.L. 100–180, § 1231(19)(B), 101 Stat. 1161.)

§ 9802. Admiralty claims against the United States

(a) The Secretary of the Air Force may settle or compromise an admiralty claim against the United States for—

(1) damage caused by a vessel of, or in the service of, the Department of the Air Force or by other property under the jurisdiction of the Department of the Air Force;

(2) compensation for towage and salvage service, including contract salvage, rendered to a vessel of, or in the service of, the Department of the Air Force or to other property under the jurisdiction of the Department of the Air Force; or

(3) damage caused by a maritime tort committed by any agent or employee of the Department of the Air Force or by property under the jurisdiction of the Department of the Air Force.

(b) If a claim under subsection (a) is settled or compromised for $500,000 or less, the Secretary of the Air Force may pay it. If it is settled or compromised for more than $500,000, he shall certify it to Congress.

(c) In any case where the amount to be paid is not more than $100,000, the Secretary of the Air Force may delegate his authority under subsection (a) to any person in the Department of the Air Force designated by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 592; July 7, 1965, P.L. 89–67, 79 Stat. 212; Aug. 29, 1972, P.L. 92–417, § 1(6), 86 Stat. 655; Nov. 29, 1989, P.L. 101–189, § 1633, 103 Stat. 1608.)

§ 9803. Admiralty claims by United States

(a) Under the direction of the Secretary of Defense, the Secretary of the Air Force may settle, or compromise, and receive payment of a claim by the United States for damage to property under the jurisdiction of the Department of the Air Force or property for which the Department has assumed an obligation to respond for damage, if—

(1) the claim is—

(A) of a kind that is within the admiralty jurisdiction of a district court of the United States; or

(B) for damage caused by a vessel or floating object; and

(2) the amount to be received by the United States is not more than $500,000.

(b) In exchange for payment of an amount found to be due the United States under subsection (a), the Secretary of the Air Force may execute a release of the claim on behalf of the United States. Amounts received under this section shall be covered into the Treasury.

(c) In any case where the amount to be received by the United States is not more than $100,000, the Secretary of the Air Force may delegate his authority under subsections (a) and (b) to any person in the Department of the Air Force designated by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 592; July 7, 1965, P.L. 89–67, 79 Stat. 212; Nov. 29, 1989, P.L. 101–189, § 1633, 103 Stat. 1608.)

§ 9804. Salvage claims by United States

(a) The Secretary of the Air Force may settle, or compromise, and receive payment of a claim by the United States for salvage services performed by the Department of the Air Force. Amounts received under this section shall be covered into the Treasury.

(b) In any case where the amount to be received by the United States is not more than $10,000, the Secretary of the Air Force may delegate his authority under subsection (a) to any person designated by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 592; Aug. 29, 1972, P.L. 92–417, § 1(8), 86 Stat. 655.)

[§ 9805. Repealed. P.L. 86–533, § 1(7)(A), June 29, 1960, 74 Stat. 246]

§ 9806. Settlement or compromise: final and conclusive

Notwithstanding any other provision of law, upon acceptance of payment the settlement or compromise of a claim under section 9802 or 9803 of this title is final and conclusive.

(Aug. 10, 1956, ch. 1041, 70A Stat. 593.)

CHAPTER 953—ACCOUNTABILITY AND RESPONSIBILITY

Sec.
9831. Custody of departmental records and property.
9832. Property accountability: regulations.
[9833. Repealed.]
9835. Reports of survey.
9836. Individual equipment: unauthorized disposition.
9837. Settlement of accounts: remission or cancellation of indebtedness of enlisted members.
9838. Settlement of accounts: affidavit of squadron commander.
9839. Settlement of accounts: oaths.
9840. Final settlement of officer's accounts.
9841. Payment of small amounts to public creditors.
9842. Settlement of accounts of line officers.

§ 9831. Custody of departmental records and property

The Secretary of the Air Force has custody and charge of all books, records, papers, furniture, fixtures, and other property under the lawful control of the executive part of the Department of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 593.)

§ 9832. Property accountability: regulations

The Secretary of the Air Force may prescribe regulations for the accounting for Air Force property and the fixing of responsibility for that property.

(Aug. 10, 1956, ch. 1041, 70A Stat. 593.)

[§ 9833. Repealed. P.L. 87–480, § 1(4), June 8, 1962, 76 Stat. 94]

§ 9835. Reports of survey

(a) Under such regulations as the Secretary of the Air Force may prescribe, any officer of the Air Force designated by him 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 the Air Force.

(b) Action taken under subsection (a) is final, except that action holding a person pecuniarily liable for loss, spoilage, destruction, or damage is not final until approved by the Secretary or an officer of the Air Force designated by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 593.)

§ 9836. Individual equipment: unauthorized disposition

(a) No enlisted member of the Air Force may sell, lend, pledge, barter, or give any clothing, arms, or equipment furnished him by the United States to any person other than a member of the Air Force, or an officer of the United States, authorized to receive it.

(b) If a member of the Air Force has disposed of property in violation of subsection (a) and it is in the possession of a person who is neither a member of the Air Force, nor an officer of the United States, 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 it, wherever found. Possession of such property furnished by the United States to a member of the Air Force, by a person who is neither a member of the Air Force nor an officer of the United States, is prima facie evidence that it has been disposed of in violation of subsection (a).

(c) If an officer who seizes property under subsection (b) is not authorized to retain it for the United States, he shall deliver it to a person who is authorized to retain it.

(Aug. 10, 1956, ch. 1041, 70A Stat. 594.)

§ 9837. Settlement of accounts: remission or cancellation of indebtedness of enlisted members

If he considers it in the best interest of the United States, the Secretary may have remitted or cancelled any part of an enlisted member's indebtedness to the United States or any of its instrumentalities remaining unpaid before, or at the time of, that member's honorable discharge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 594; Sept. 2, 1958, P.L. 85–861, § 33(a)(45), 72 Stat. 1567; Sept. 7, 1962, P.L. 87–649, § 14c(58), 76 Stat. 502; Dec. 12, 1980, P.L. 96–513, § 514(22) (A), (B), 94 Stat. 2936.)

§ 9838. Settlement of accounts: affidavit of squadron commander

In the settlement of the accounts of the commanding officer of a squadron for clothing and other military supplies, his affidavit may be received to show—

(1) that vouchers or squadron books were lost;

(2) anything tending to prove that any apparent deficiency of those articles was caused by unavoidable accident, or by loss in actual service without his fault; or

(3) that all or part of the clothing and supplies was properly used.

The affidavit may be used as evidence of the facts set forth, with or without other evidence, as determined by the Secretary of the Air Force to be just and proper under the circumstances.

(Aug. 10, 1956, ch. 1041, 70A Stat. 595.)

§ 9839. Settlement of accounts: oaths

The Secretary of the Air Force may detail any employee of the Department of the Air Force to administer oaths required by law in the settlement of an officer's accounts for clothing and other military supplies. An oath administered under this section shall be without expense to the person to whom it is administered.

(Aug. 10, 1956, ch. 1041, 70A Stat. 595.)

§ 9840. Final settlement of officer's accounts

Before final payment upon discharge may be made to an officer of the Air Force who has been accountable or responsible for public property, he must obtain a certificate of nonindebtedness to the

United States from each officer to whom he was accountable or responsible for property. He must also make an affidavit, certified by his commanding officer to be correct, that he is not accountable or responsible for property to any other officer. An officer who has not been responsible for public property must make an affidavit of that fact, certified by his commanding officer. Compliance with this section warrants the final payment of the officer concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 595.)

§ 9841. Payment of small amounts to public creditors

When authorized by the Secretary of the Air Force, a disbursing official of Air Force subsistence funds may keep a limited amount of those funds in the personal possession and at the risk of the disbursing official to pay small amounts to public creditors.

(Added P.L. 97–258, § 2(b)(14)(B), Sept. 13, 1982, 96 Stat. 1058.)

§ 9842. Settlement of accounts of line officers

The Comptroller General shall settle the account of a line officer of the Air Force for pay due the officer even if the officer cannot account for property entrusted to the officer or cannot make a monthly report or return, when the Comptroller General is satisfied that the inability to account for property or make a report or return was the result of the officer having been a prisoner, or of an accident or casualty of war.

(Added P.L. 97–258, § 2(b)(14)(B), Sept. 13, 1982, 96 Stat. 1058.)

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CHAPTER 1001—DEFINITIONS

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§ 10001. Definition of State

In this subtitle, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2969.)

CHAPTER 1003—RESERVE COMPONENTS GENERALLY

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§ 10101. Reserve components named

The reserve components of the armed forces are:

(1) The Army National Guard of the United States.
(2) The Army Reserve.
(3) The Naval Reserve.
(4) The Marine Corps Reserve.
(5) The Air National Guard of the United States.
(6) The Air Force Reserve.
(7) The Coast Guard Reserve.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2970 [derived from § 261(a)].)

§ 10102. Purpose of reserve components

The purpose of each reserve component is to provide trained units and qualified persons available for active duty in the armed forces, in time of war or national emergency, and at such other times as the national security may require, to fill the needs of the armed forces whenever, during and after the period needed to procure and train additional units and qualified persons to achieve the planned mobilization, more units and persons are needed than are in the regular components.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2970 [derived from § 262].)

§ 10103. Basic policy for order into Federal service

Whenever Congress determines that more units and organizations are needed for the national security than are in the regular components of the ground and air forces, the Army National Guard of the United States and the Air National Guard of the United States, or such parts of them as are needed, together with units of other reserve components necessary for a balanced force, shall be ordered to active duty and retained as long as so needed.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2970 [derived from § 263]; amended P.L. 104–106, § 1501(b)(2)(A), Feb. 10, 1996, 110 Stat. 495.)

§ 10104. Army Reserve: composition

The Army Reserve includes all Reserves of the Army who are not members of the Army National Guard of the United States.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2970 [derived from § 3076].)

§ 10105. Army National Guard of the United States: composition [1]

The Army National Guard of the United States is the reserve component of the Army that consists of—

(1) federally recognized units and organizations of the Army National Guard; and

(2) members of the Army National Guard who are also Reserves of the Army.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2970 [derived from § 3077].)

§ 10106. Army National Guard: when a component of the Army

The Army National Guard while in the service of the United States is a component of the Army.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2970 [derived from § 3078].)

§ 10107. Army National Guard of the United States: status when not in Federal service

When not on active duty, members of the Army National Guard of the United States shall be administered, armed, equipped, and trained in their status as members of the Army National Guard.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971 [derived from § 3079].)

§ 10108. Naval Reserve: administration

(a) The Naval Reserve is the reserve component of the Navy. It shall be organized, administered, trained, and supplied under the direction of the Chief of Naval Operations.

(b) The bureaus and offices of the executive part of the Department of the Navy have the same relation and responsibility to the Naval Reserve as they do to the Regular Navy.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971 [derived from § 5251(a),(b)].)

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[1] The Army National Guard Combat Readiness Reform Act of 1992 (title XI of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 102–484)), as amended, is set out at the end of this chapter.

§ 10109. Marine Corps Reserve: administration

(a) The Marine Corps Reserve is the reserve component of the Marine Corps. It shall be organized, administered, trained, and supplied under the direction of the Commandant of the Marine Corps.

(b) The departments and offices of Headquarters, Marine Corps have the same relation and responsibilities to the Marine Corps Reserve as they do to the Regular Marine Corps.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971 [derived from § 5252(a),(b)].)

§ 10110. Air Force Reserve: composition

The Air Force Reserve is a reserve component of the Air Force to provide a reserve for active duty. It consists of the members of the officers' section of the Air Force Reserve and of the enlisted section of the Air Force Reserve. It includes all Reserves of the Air Force who are not members of the Air National Guard of the United States.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971 [derived from § 8076].)

§ 10111. Air National Guard of the United States: composition

The Air National Guard of the United States is the reserve component of the Air Force that consists of—

(1) federally recognized units and organizations of the Air National Guard; and

(2) members of the Air National Guard who are also Reserves of the Air Force.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971 [derived from § 8077].)

§ 10112. Air National Guard: when a component of the Air Force

The Air National Guard while in the service of the United States is a component of the Air Force.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971 [derived from § 8078].)

§ 10113. Air National Guard of the United States: status when not in Federal service

When not on active duty, members of the Air National Guard of the United States shall be administered, armed, equipped, and trained in their status as members of the Air National Guard.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971 [derived from § 8079].)

§ 10114. Coast Guard Reserve

As provided in section 701 of title 14, the Coast Guard Reserve is a component of the Coast Guard and is organized, administered, trained, and supplied under the direction of the Commandant of the Coast Guard. Laws applicable to the Coast Guard Reserve are set forth in chapter 21 of title 14 (14 U.S.C. 701 et seq.).

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971.)

ARMY GUARD COMBAT REFORM INITIATIVE

Title XI of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 102–484), as amended, provides:

TITLE XI—ARMY GUARD COMBAT REFORM INITIATIVE

SEC. 1101. SHORT TITLE.

This title may be cited as the "Army National Guard Combat Readiness Reform Act of 1992".

Subtitle A—Deployability Enhancements

SEC. 1111. PRIOR ACTIVE-DUTY PERSONNEL.

(a) ADDITIONAL PRIOR ACTIVE DUTY OFFICERS.—The Secretary of the Army shall increase the number of qualified prior active-duty officers in the Army National Guard by providing a program that permits the separation of officers on active duty with at least two, but less than three, years of active service upon condition that the officer is accepted for appointment in the Army National Guard. The Secretary shall have a goal of having not fewer than 150 officers become members of the Army National Guard each year under this section.

(b) ADDITIONAL PRIOR ACTIVE DUTY ENLISTED MEMBERS.—The Secretary of the Army shall increase the number of qualified prior active-duty enlisted members in the Army National Guard through the use of enlistments as described in section 8020 of the Department of Defense Appropriations Act, 1994 (Public Law 103–139). The Secretary shall enlist not fewer than 1,000 new enlisted members each year under enlistments described in that section.

(c) QUALIFIED PRIOR ACTIVE-DUTY PERSONNEL.—For purposes of this section, qualified prior active-duty personnel are members of the Army National Guard with not less than two years of active duty.

SEC. 1112. SERVICE IN SELECTED RESERVE IN LIEU OF ACTIVE-DUTY SERVICE.

(a) ACADEMY GRADUATES AND DISTINGUISHED ROTC GRADUATES TO SERVE IN SELECTED RESERVE FOR PERIOD OF ACTIVE-DUTY SERVICE OBLIGATION NOT SERVED ON ACTIVE DUTY.—(1) An officer who is a graduate of one of the service academies or who was commissioned as a distinguished Reserve Officers' Training Corps graduate and who is permitted to be released from active duty before the completion of the active-duty service obligation applicable to that officer shall serve the remaining period of such active-duty service obligation as a member of the Selected Reserve.

(2) The Secretary concerned may waive paragraph (1) in a case in which the Secretary determines that there is no unit position available for the officer.

(b) ROTC GRADUATES.—The Secretary of the Army shall provide a program under which graduates of the Reserve Officers' Training Corps program may perform their minimum period of obligated service by a combination of (A) two years of active duty, and (B) such additional period of service as is necessary to complete the remainder of such obligation, to be served in the Selected Reserve.

SEC. 1113. REVIEW OF OFFICER PROMOTIONS BY COMMANDER OF ASSOCIATED ACTIVE DUTY UNIT.

(a) REVIEW.—Whenever an officer in an Army Selected Reserve unit as defined in subsection (b) is recommended for a unit vacancy promotion to a grade above first lieutenant, the recommended promotion shall be reviewed by the commander of the active duty unit associated with the Selected Reserve unit of that officer or another active-duty officer designated by the Secretary of the Army. The commander or other active-duty officer designated by the Secretary of the Army shall provide to the promoting authority, through the promotion board convened by the promotion authority to consider unit vacancy promotion candidates, before the promotion is made, a recommendation of concurrence or nonconcurrence in the promotion. The recommendation shall be provided to the promoting authority within 60 days after receipt of notice of the recommended promotion.

(b) COVERAGE OF SELECTED RESERVE COMBAT AND EARLY DEPLOYING UNITS.—(1) Subsection (a) applies to officers in all units of the Selected Reserve that are designated as combat units or that are designated for deployment within 75 days of mobilization.

(2) [Obsolete effective date provision for subsection (a) omitted]

(c) [Obsolete report requirement omitted]

SEC. 1114. NONCOMMISSIONED OFFICER EDUCATION REQUIREMENTS.

(a) NONWAIVABILITY.—Any standard prescribed by the Secretary of the Army establishing a military education requirement for noncommissioned officers that must be met as a requirement for promotion to a higher noncommissioned officer grade may be waived only if the Secretary determines that the waiver is necessary in order to preserve unit leadership continuity under combat conditions.

(b) AVAILABILITY OF TRAINING POSITIONS.—The Secretary of the Army shall ensure that there are sufficient training positions available to enable compliance with subsection (a).

SEC. 1115. INITIAL ENTRY TRAINING AND NONDEPLOYABLE PERSONNEL ACCOUNT.

(a) ESTABLISHMENT OF PERSONNEL ACCOUNT.—The Secretary of the Army shall establish a personnel accounting category for members of the Army Selected Reserve to be used for categorizing members of the Selected Reserve who have not completed the minimum training required for deployment or who are otherwise not available for deployment. The account shall be designed so that it is compatible with the decentralized personnel systems of the Army Guard and Reserve. The account shall be used for the reporting of personnel readiness and may not be used as a factor in establishing the level of Army Guard and Reserve force structure.

(b) USE OF ACCOUNT.—Until a member of the Army Selected Reserve has completed the minimum training necessary for deployment, the member may not be assigned to fill a position in a Selected Reserve unit but shall be carried in the account established under subsection (a).

(c) TIME FOR QUALIFICATION FOR DEPLOYMENT.—(1) If at the end of 24 months after a member of the Army Selected Reserve enters the Army Selected Reserve, the member has not completed the minimum training required for deployment, the member shall be discharged.

(2) The Secretary of the Army may waive the requirement in paragraph (1) in the case of health care providers and in other cases determined necessary. The authority to make such a waiver may not be delegated.

SEC. 1116. MINIMUM PHYSICAL DEPLOYABILITY STANDARDS.

The Secretary of the Army shall transfer the personnel classification of a member of the Army Selected Reserve from the Selected Reserve unit of the member to the personnel account established pursuant to section 1115 if the member does not meet minimum physical profile standards required for deployment. Any such transfer shall be made not later than 90 days after the date on which the determination that the member does not meet such standards is made.

SEC. 1117. MEDICAL ASSESSMENTS.

[Repealed. See section 1174a(d) of title 10]

SEC. 1118. DENTAL READINESS OF MEMBERS OF EARLY DEPLOYING UNITS.

[Repealed. See section 1174a(d) of title 10]

SEC. 1119. COMBAT UNIT TRAINING.

The Secretary of the Army shall establish a program to minimize the post-mobilization training time required for combat units of the Army National Guard. The program shall require—

(1) that unit premobilization training emphasize—

(A) individual soldier qualification and training;

(B) collective training and qualification at the crew, section, team, and squad level; and

(C) maneuver training at the platoon level as required of all Army units; and

(2) that combat training for command and staff leadership include annual multi-echelon training to develop battalion, brigade, and division level skills, as appropriate.

SEC. 1120. USE OF COMBAT SIMULATORS.

The Secretary of the Army shall expand the use of simulations, simulators, and advanced training devices and technologies in order to increase training opportunities for members and units of the Army National Guard and the Army Reserve.

Subtitle B—Assessment of National Guard Capability

SEC. 1121. DEPLOYABILITY RATING SYSTEM.

The Secretary of the Army shall modify the readiness rating system for units of the Army Reserve and Army National Guard to ensure that the rating system

provides an accurate assessment of the deployability of a unit and those shortfalls of a unit that require the provision of additional resources. In making such modifications, the Secretary shall ensure that the unit readiness rating system is designed so—

(1) that the personnel readiness rating of a unit reflects—

(A) both the percentage of the overall personnel requirement of the unit that is manned and deployable and the fill and deployability rate for critical occupational specialties necessary for the unit to carry out its basic mission requirements; and

(B) the number of personnel in the unit who are qualified in their primary military occupational specialty; and

(2) that the equipment readiness assessment of a unit—

(A) documents all equipment required for deployment;

(B) reflects only that equipment that is directly possessed by the unit;

(C) specifies the effect of substitute items; and

(D) assesses the effect of missing components and sets on the readiness of major equipments items.

SEC. 1122. INSPECTIONS.

[Amended section 105 of title 32, United States Code]

Subtitle C—Compatibility of Guard Units With Active Component Units

SEC. 1131. ACTIVE DUTY ASSOCIATE UNIT RESPONSIBILITY.

(a) ASSOCIATE UNITS.—The Secretary of the Army shall require—

(1) that each ground combat maneuver brigade of the Army National Guard that (as determined by the Secretary) is essential for the execution of the National Military Strategy be associated with an active-duty combat unit; and

(2) that combat support and combat service support units of the Army Selected Reserve that (as determined by the Secretary) are essential for the execution of the National Military Strategy be associated with active-duty units.

(b) RESPONSIBILITIES.—The commander (at a brigade or higher level) of the associated active duty unit for any National Guard unit or Army Selected Reserve unit that (as determined by the Secretary under subsection (a)) is essential for the execution of the National Military Strategy shall be responsible for—

(1) approving the training program of that unit;

(2) reviewing the readiness report of that unit;

(3) assessing the manpower, equipment, and training resources requirements of that unit; and

(4) validating, not less often than annually, the compatibility of that unit with the active duty forces.

(c) [Obsolete implementation deadlines omitted]

SEC. 1132. TRAINING COMPATIBILITY.

[Amended section 414(c) of the National Defense Authorization Act for Fiscal Years 1992 and 1993, set out as a note under section 12001]

SEC. 1133. SYSTEMS COMPATIBILITY.

(a) COMPATIBILITY PROGRAM.—The Secretary of the Army shall develop and implement a program to ensure that Army personnel systems, Army supply systems, Army maintenance management systems, and Army finance systems are compatible across all Army components.

(b) [Obsolete report requirement omitted]

SEC. 1134. EQUIPMENT COMPATIBILITY.

[Amended section 115b(b) [now 10541] of title 10, United States Code]

SEC. 1135. DEPLOYMENT PLANNING REFORM.

(a) REQUIREMENT FOR PRIORITY SYSTEM.—The Secretary of the Army shall develop a system for identifying the priority for mobilization of Army reserve component units. The priority system shall be based on regional contingency planning requirements and doctrine to be integrated into the Army war planning process.

(b) UNIT DEPLOYMENT DESIGNATORS.—The system shall include the use of Unit Deployment Designators to specify the post-mobilization training days allocated to a unit before deployment. The Secretary shall specify standard designator categories in order to group units according to the timing of deployment after mobilization.

(c) USE OF DESIGNATORS.—(1) The Secretary shall establish procedures to link the Unit Deployment Designator system to the process by which resources are provided for National Guard units.

(2) The Secretary shall develop a plan that allocates greater funding for training, full-time support, equipment, and manpower in excess of 100 percent of authorized strength to units assigned Unit Deployment Designators that allow fewer post-mobilization training days.

(3) The Secretary shall establish procedures to identify the command level at which combat units would, upon deployment, be integrated with active component forces consistent with the Unit Deployment Designator system.

SEC. 1136. QUALIFICATION FOR PRIOR-SERVICE ENLISTMENT BONUS.

[Amended section 308i(c) of title 37, United States Code]

SEC. 1137. STUDY OF IMPLEMENTATION FOR ALL RESERVE COMPONENTS.

[Obsolete report requirement omitted]

CHAPTER 1005—ELEMENTS OF RESERVE COMPONENTS

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10151. Standby Reserve: composition.
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§ 10141. Ready Reserve; Standby Reserve; Retired Reserve: placement and status of members; training categories

(a) There are in each armed force a Ready Reserve, a Standby Reserve, and a Retired Reserve. Each Reserve shall be placed in one of those categories.

(b) Reserves who are on the inactive status list of a reserve component, or who are assigned to the inactive Army National Guard or the inactive Air National Guard, are in an inactive status. Members in the Retired Reserve are in a retired status. All other Reserves are in an active status.

(c) As prescribed by the Secretary concerned, each reserve component except the Army National Guard of the United States and the Air National Guard of the United States shall be divided into training categories according to the degrees of training, including the number and duration of drills or equivalent duties to be completed in stated periods. The designation of training categories shall be the same for all armed forces and the same within the Ready Reserve and the Standby Reserve.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2972 [derived from §§ 267, 2001].)

§ 10142. Ready Reserve

(a) The Ready Reserve consists of units or Reserves, or both, liable for active duty as provided in sections 12301 and 12302 of this title.

(b) The authorized strength of the Ready Reserve is 2,900,000.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2972 [derived from § 268(a)].)

§ 10143. Ready Reserve: Selected Reserve

(a) Within the Ready Reserve of each of the reserve components there is a Selected Reserve. The Selected Reserve consists of units, and, as designated by the Secretary concerned, of Reserves,

trained as prescribed in section 10147(a)(1) of this title or section 502(a) of title 32, as appropriate.

(b) The organization and unit structure of the Selected Reserve shall be approved—

(1) in the case of all reserve components other than the Coast Guard Reserve, by the Secretary of Defense based upon recommendations from the military departments as approved by the Chairman of the Joint Chiefs of Staff in accordance with contingency and war plans; and

(2) in the case of the Coast Guard Reserve, by the Secretary of Transportation upon the recommendation of the Commandant of the Coast Guard.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2972 [derived from § 268(b),(c)].)

§ 10144. Ready Reserve: Individual Ready Reserve

(a) Within the Ready Reserve of each of the reserve components there is an Individual Ready Reserve. The Individual Ready Reserve consists of those members of the Ready Reserve who are not in the Selected Reserve or the inactive National Guard.

(b)(1) Within the Individual Ready Reserve of each reserve component there is a category of members, as designated by the Secretary concerned, who are subject to being ordered to active duty involuntarily in accordance with section 12304 of this title. A member may not be placed in that mobilization category unless—

(A) the member volunteers for that category; and

(B) the member is selected for that category by the Secretary concerned, based upon the needs of the service and the grade and military skills of that member.

(2) A member of the Individual Ready Reserve may not be carried in such mobilization category of members after the end of the 24-month period beginning on the date of the separation of the member from active service.

(3) The Secretary shall designate the grades and military skills or specialities of members to be eligible for placement in such mobilization category.

(4) A member in such mobilization category shall be eligible for benefits (other than pay and training) as are normally available to members of the Selected Reserve, as determined by the Secretary of Defense.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2973; amended P.L. 105–85, § 511(a), Nov. 18, 1997, 111 Stat. 1728.)

§ 10145. Ready Reserve: placement in

(a) Each person required under law to serve in a reserve component shall, upon becoming a member, be placed in the Ready Reserve of his armed force for his prescribed term of service, unless he is transferred to the Standby Reserve under section 10146(a) of this title.

(b) The units and members of the Army National Guard of the United States and of the Air National Guard of the United States are in the Ready Reserve of the Army and the Ready Reserve of the Air Force, respectively.

(c) All Reserves assigned to units organized to serve as units and designated as units in the Ready Reserve are in the Ready Reserve.

(d) Under such regulations as the Secretary concerned may prescribe, any qualified member of a reserve component or any qualified retired enlisted member of a regular component may, upon his request, be placed in the Ready Reserve. However, a member of the Retired Reserve entitled to retired pay or a retired enlisted member of a regular component may not be placed in the Ready Reserve unless the Secretary concerned makes a special finding that the member's services in the Ready Reserve are indispensable. The Secretary concerned may not delegate his authority under the preceding sentence.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2973 [derived from § 269(a)–(d)].)

§ 10146. Ready Reserve: transfer from

(a) Subject to subsection (c) and under regulations prescribed by the Secretary of Defense, or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, a member in the Ready Reserve may be transferred to the Standby Reserve.

(b) A Reserve who is qualified and so requests may be transferred to the Retired Reserve under regulations prescribed by the Secretary concerned and, in the case of the Secretary of a military department, approved by the Secretary of Defense.

(c) A member of the Army National Guard of the United States or the Air National Guard of the United States may be transferred to the Standby Reserve only with the consent of the governor or other appropriate authority of the State.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2973 [derived from § 269(e)–(g)].)

§ 10147. Ready Reserve: training requirements

(a) Except as specifically provided in regulations to be prescribed by the Secretary of Defense, or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, each person who is enlisted, inducted, or appointed in an armed force, and who becomes a member of the Ready Reserve under any provision of law except section 513 or 10145(b) of this title, shall be required, while in the Ready Reserve, to—

(1) participate in at least 48 scheduled drills or training periods during each year and serve on active duty for training of not less than 14 days (exclusive of traveltime) during each year; or

(2) serve on active duty for training not more than 30 days during each year.

(b) A member who has served on active duty for one year or longer may not be required to perform a period of active duty for training if the first day of that period falls during the last 120 days of the member's required membership in the Ready Reserve.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2973 [derived from § 270(a)].)

§ 10148. Ready Reserve: failure to satisfactorily perform prescribed training

(a) A member of the Ready Reserve covered by section 10147 of this title who fails in any year to perform satisfactorily the training duty prescribed in that section, as determined by the Secretary concerned under regulations prescribed by the Secretary of Defense, may be ordered without his consent to perform additional active duty for training for not more than 45 days. If the failure occurs during the last year of his required membership in the Ready Reserve, his membership is extended until he performs that additional active duty for training, but not for more than six months.

(b) A member of the Army National Guard of the United States or the Air National Guard of the United States who fails in any year to perform satisfactorily the training duty prescribed by or under law for members of the Army National Guard or the Air National Guard, as the case may be, as determined by the Secretary concerned, may, upon the request of the Governor of the State (or, in the case of the District of Columbia, the commanding general of the District of Columbia National Guard) be ordered, without his consent, to perform additional active duty for training for not more than 45 days. A member ordered to active duty under this subsection shall be ordered to duty as a Reserve of the Army or as a Reserve of the Air Force, as the case may be.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2974 [derived from § 270(b),(c)].)

§ 10149. Ready Reserve: continuous screening

(a) Under regulations to be prescribed by the President, the Secretary concerned shall provide a system of continuous screening of units and members of the Ready Reserve to ensure the following:

(1) That there will be no significant attrition of those members or units during a mobilization.

(2) That there is a proper balance of military skills.

(3) That except for those with military skills for which there is an overriding requirement, members having critical civilian skills are not retained in numbers beyond the need for those skills.

(4) That with due regard to national security and military requirements, recognition will be given to participation in combat.

(5) That members whose mobilization in an emergency would result in an extreme personal or community hardship are not retained in the Ready Reserve.

(b) Under regulations to be prescribed by the Secretary of Defense, and by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, a member of the Ready Reserve who is designated as a member not to be retained in the Ready Reserve as a result of screening under subsection (a) shall, as appropriate, be—

(1) transferred to the Standby Reserve;

(2) discharged; or

(3) if the member is eligible and applies therefor, transferred to the Retired Reserve.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2974 [derived from § 271].)

§ 10150. Ready Reserve: transfer back from Standby Reserve

Under regulations to be prescribed by the Secretary of Defense, and by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, a member of the Standby Reserve who has not completed his required period of service in the Ready Reserve may be transferred to the Ready Reserve when the reason for his transfer to the Standby Reserve no longer exists.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2975 [derived from § 272].)

§ 10151. Standby Reserve: composition

The Standby Reserve consists of those units or members, or both, of the reserve components, other than those in the Ready Reserve or Retired Reserve, who are liable for active duty only as provided in sections 12301 and 12306 of this title.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2975 [derived from § 273(a)].)

§ 10152. Standby Reserve: inactive status list

An inactive status list shall be maintained in the Standby Reserve. Whenever an authority designated by the Secretary concerned considers that it is in the best interest of the armed force concerned, a member in the Standby Reserve who is not required to remain a Reserve, and who cannot participate in prescribed training, may, if qualified, be transferred to the inactive status list under regulations to be prescribed by the Secretary concerned. These regulations shall fix the conditions under which such a member is entitled to be returned to an active status.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2975 [derived from § 273(b)].)

§ 10153. Standby Reserve: status of members

While in an inactive status, a Reserve is not eligible for pay or promotion and (as provided in section 12734(a) of this title) does not accrue credit for years of service under chapter 1223 of this title.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2975 [derived from § 273(c)].)

§ 10154. Retired Reserve

The Retired Reserve consists of the following Reserves:

(1) Reserves who are or have been retired under section 3911, 6323, or 8911 of this title or under section 291 of title 14.

(2) Reserves who have been transferred to the Retired Reserve upon their request, retain their status as Reserves, and are otherwise qualified.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2975 [derived from § 274].)

CHAPTER 1006—RESERVE COMPONENT COMMANDS

Sec.
10171. United States Army Reserve Command.
10172. Naval Reserve Force.
10173. Marine Forces Reserve.
10174. Air Force Reserve Command.

§ 10171. United States Army Reserve Command

(a) COMMAND.—The United States Army Reserve Command is a separate command of the Army commanded by the Chief of Army Reserve.

(b) CHAIN OF COMMAND.—Except as otherwise prescribed by the Secretary of Defense, the Secretary of the Army shall prescribe the chain of command for the United States Army Reserve Command.

(c) ASSIGNMENT OF FORCES.—The Secretary of the Army—

(1) shall assign to the United States Army Reserve Command all forces of the Army Reserve in the continental United States other than forces assigned to the unified combatant command for special operations forces established pursuant to section 167 of this title; and

(2) except as otherwise directed by the Secretary of Defense in the case of forces assigned to carry out functions of the Secretary of the Army specified in section 3013 of this title, shall assign all such forces of the Army Reserve to the commander of the United States Atlantic Command.

(Added P.L. 104–201, § 1211(a)(1), Sept. 23, 1996, 110 Stat. 2689.)

§ 10172. Naval Reserve Force

(a) ESTABLISHMENT OF COMMAND.—The Secretary of the Navy, with the advice and assistance of the Chief of Naval Operations, shall establish a Naval Reserve Force. The Naval Reserve Force shall be operated as a separate command of the Navy.

(b) COMMANDER.—The Chief of Naval Reserve shall be the commander of the Naval Reserve Force. The commander of the Naval Reserve Force reports directly to the Chief of Naval Operations.

(c) ASSIGNMENT OF FORCES.—The Secretary of the Navy—

(1) shall assign to the Naval Reserve Force specified portions of the Naval Reserve other than forces assigned to the unified combatant command for special operations forces established pursuant to section 167 of this title; and

(2) except as otherwise directed by the Secretary of Defense in the case of forces assigned to carry out functions of the Secretary of the Navy specified in section 5013 of this title, shall assign to the combatant commands all such forces assigned to the Naval Reserve Force under paragraph (1) in the manner specified by the Secretary of Defense.

(Added P.L. 104–201, § 1211(a)(1), Sept. 23, 1996, 110 Stat. 2689.)

§ 10173. Marine Forces Reserve

(a) ESTABLISHMENT.—The Secretary of the Navy, with the advice and assistance of the Commandant of the Marine Corps, shall establish in the Marine Corps a command known as the Marine Forces Reserve.

(b) COMMANDER.—The Marine Forces Reserve is commanded by the Commander, Marine Forces Reserve. The Commander, Marine Forces Reserve, reports directly to the Commandant of the Marine Corps.

(c) ASSIGNMENT OF FORCES.—The Commandant of the Marine Corps—

(1) shall assign to the Marine Forces Reserve the forces of the Marine Corps Reserve stationed in the continental United States other than forces assigned to the unified combatant command for special operations forces established pursuant to section 167 of this title; and

(2) except as otherwise directed by the Secretary of Defense in the case of forces assigned to carry out functions of the Secretary of the Navy specified in section 5013 of this title, shall assign to the combatant commands (through the Marine Corps component commander for each such command) all such forces assigned to the Marine Forces Reserve under paragraph (1) in the manner specified by the Secretary of Defense.

(Added P.L. 104–201, § 1211(a)(1), Sept. 23, 1996, 110 Stat. 2690.)

§ 10174. Air Force Reserve Command

(a) ESTABLISHMENT OF COMMAND.—The Secretary of the Air Force, with the advice and assistance of the Chief of Staff of the Air Force, shall establish an Air Force Reserve Command. The Air Force Reserve Command shall be operated as a separate command of the Air Force.

(b) COMMANDER.—The Chief of Air Force Reserve is the Commander of the Air Force Reserve Command. The commander of the Air Force Reserve Command reports directly to the Chief of Staff of the Air Force.

(c) ASSIGNMENT OF FORCES.—The Secretary of the Air Force—

(1) shall assign to the Air Force Reserve Command all forces of the Air Force Reserve stationed in the continental United States other than forces assigned to the unified combatant command for special operations forces established pursuant to section 167 of this title; and

(2) except as otherwise directed by the Secretary of Defense in the case of forces assigned to carry out functions of the Secretary of the Air Force specified in section 8013 of this title, shall assign to the combatant commands all such forces assigned to the Air Force Reserve Command under paragraph (1) in the manner specified by the Secretary of Defense.

(Added P.L. 104–201, § 1211(a)(1), Sept. 23, 1996, 110 Stat. 2690.)

CHAPTER 1007—ADMINISTRATION OF RESERVE COMPONENTS

Sec.
10201. Assistant Secretary of Defense for Reserve Affairs.
10202. Regulations.
10203. Reserve affairs: designation of general or flag officer of each armed force.
10204. Personnel records.
10205. Members of Ready Reserve: requirement of notification of change of status.
10206. Members: periodic physical examinations.
10207. Mobilization forces: maintenance.
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10212. Gratuitous services of officers: authority to accept.
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10214. Adjutants general and assistant adjutants general: reference to other officers of National Guard.
10215. Officers of Army National Guard of the United States and Air National Guard of the United States: authority with respect to Federal status.
10216. Military technicians (dual status).
10217. Non-dual status technicians.
10218. Army and Air Force Reserve technicians: conditions for retention; mandatory retirement under civil service laws.

§ 10201. Assistant Secretary of Defense for Reserve Affairs

As provided in section 138(b)(2) of this title, the official in the Department of Defense with responsibility for overall supervision of reserve component affairs of the Department of Defense is the Assistant Secretary of Defense for Reserve Affairs.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2976.)

§ 10202. Regulations

(a) Subject to standards, policies, and procedures prescribed by the Secretary of Defense, the Secretary of each military department shall prescribe such regulations as the Secretary considers necessary to carry out provisions of law relating to the reserve components under the Secretary's jurisdiction.

(b) The Secretary of Transportation, with the concurrence of the Secretary of the Navy, shall prescribe such regulations as the Secretary considers necessary to carry out all provisions of law relating to the reserve components insofar as they relate to the Coast Guard, except when the Coast Guard is operating as a service in the Navy.

(c) So far as practicable, regulations for all reserve components shall be uniform.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2976 [derived from § 280].)

§ 10203. Reserve affairs: designation of general or flag officer of each armed force

(a) The Secretary of the Army may designate a general officer of the Army to be directly responsible for reserve affairs to the Chief of Staff of the Army.

(b) The Secretary of the Navy may designate a flag officer of the Navy to be directly responsible for reserve affairs to the Chief of Naval Operations and a general officer of the Marine Corps to be directly responsible for reserve affairs to the Commandant of the Marine Corps.

(c) The Secretary of the Air Force may designate a general officer of the Air Force to be directly responsible for reserve affairs to the Chief of Staff of the Air Force.

(d) The Secretary of Transportation may designate a flag officer of the Coast Guard to be directly responsible for reserve affairs to the Commandant of the Coast Guard.

(e) This section does not affect the functions of the Chief of the National Guard Bureau, the Chief of Army Reserve, or the Chief of Air Force Reserve.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2976 [derived from § 264(a)].)

§ 10204. Personnel records

(a) The Secretary concerned shall maintain adequate and current personnel records of each member of the reserve components under the Secretary's jurisdiction showing the following with respect to the member:

(1) Physical condition.
(2) Dependency status.
(3) Military qualifications.
(4) Civilian occupational skills.
(5) Availability for service.
(6) Such other information as the Secretary concerned may prescribe.

(b) Under regulations to be prescribed by the Secretary of Defense, the Secretary of each military department shall maintain a record of the number of members of each class of each reserve component who, during each fiscal year, have participated satisfactorily in active duty for training and inactive duty training with pay.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2977 [derived from § 275].)

§ 10205. Members of Ready Reserve: requirement of notification of change of status

(a) Each member of the Ready Reserve shall notify the Secretary concerned of any change in the member's address, marital status, number of dependents, or civilian employment and of any change in the member's physical condition that would prevent the member from meeting the physical or mental standards prescribed for the member's armed force.

(b) This section shall be administered under regulations prescribed by the Secretary of Defense and by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2977 [derived from § 652].)

§ 10206. Members: periodic physical examinations

(a) Each member of the Ready Reserve who is not on active duty shall—

(1) be examined as to his physical fitness every five years, or more often as the Secretary concerned considers necessary; and

(2) execute and submit annually to the Secretary concerned a certificate of physical condition.

Each Reserve in an active status, or on an inactive status list, who is not on active duty shall execute and submit annually to the Secretary concerned a certificate of physical condition.

(b) The kind of duty to which a Reserve ordered to active duty may be assigned shall be considered in determining physical qualifications for active duty.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2977 [derived from § 1004(a),(b)].)

§ 10207. Mobilization forces: maintenance

(a) Whenever units or members of the reserve components are ordered to active duty (other than for training) during a period of partial mobilization, the Secretary concerned shall continue to maintain mobilization forces by planning and budgeting for the continued organization and training of the reserve components not mobilized, and make the fullest practicable use of the Federal facilities vacated by mobilized units, consistent with approved joint mobilization plans.

(b) In this section, the term "partial mobilization" means the mobilization resulting from action by Congress or the President, under any law, to bring units of any reserve component, and members not assigned to units organized to serve as units, to active duty for a limited expansion of the active armed forces.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2977 [derived from § 276].)

§ 10208. Annual mobilization exercise

(a) The Secretary of Defense shall conduct at least one major mobilization exercise each year. The exercise should be as comprehensive and as realistic as possible and should include the participation of associated active component and reserve component units.

(b) The Secretary shall maintain a plan to test periodically each active component and reserve component unit based in the United States and all interactions of such units, as well as the sustainment of the forces mobilized as part of the exercise, with the objective of permitting an evaluation of the adequacy of resource allocation and planning.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2978 [derived from § 552(e) of P.L. 98–525].)

§ 10209. Regular and reserve components: discrimination prohibited

Laws applying to both Regulars and Reserves shall be administered without discrimination—

(1) among Regulars;

(2) among Reserves; and

(3) between Regulars and Reserves.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2978 [derived from § 277].)

§ 10210. Dissemination of information

The Secretary of Defense shall require the complete and current dissemination, to all Reserves and to the public, of information of interest to the reserve components.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2978 [derived from § 278].)

§ 10211. Policies and regulations: participation of Reserve officers in preparation and administration

Within such numbers and in such grades and assignments as the Secretary concerned may prescribe, each armed force shall have officers of its reserve components on active duty (other than for training) at the seat of government, and at headquarters responsible for reserve affairs, to participate in preparing and administering the policies and regulations affecting those reserve components. While so serving, such an officer is an additional number of any staff with which he is serving.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2978 [derived from § 265].)

§ 10212. Gratuitous services of officers: authority to accept

(a) Notwithstanding section 1342 of title 31, the Secretary of Defense may accept the gratuitous services of an officer of a reserve component (other than an officer of the Army National Guard of the United States or the Air National Guard of the United States) in consultation upon matters relating to the armed forces.

(b) Notwithstanding section 1342 of title 31, the Secretary of a military department may accept the gratuitous services of an officer of a reserve component under the Secretary's jurisdiction (other than an officer of the Army National Guard of the United States or the Air National Guard of the United States)—

(1) in the furtherance of the enrollment, organization, and training of that officer's reserve component or the Reserve Officers' Training Corps; or

(2) in consultation upon matters relating to the armed forces.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2978 [derived from § 279]; amended P.L. 103–355, § 3021(a), Oct. 13, 1994, 108 Stat. 3333.)

§ 10213. Reserve components: dual membership prohibited

Except as otherwise provided in this title, no person may be a member of more than one reserve component at the same time.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2979 [derived from § 261(b)].)

§ 10214. Adjutants general and assistant adjutants general: reference to other officers of National Guard

In any case in which, under the laws of a State, an officer of the National Guard of that jurisdiction, other than the adjutant general or an assistant adjutant general, normally performs the duties of that office, the references in sections 12004(b)(1), 12215, 12642(c), 14507(b), 14508(e), and 14512 of this title to the adjutant general or the assistant adjutant general shall be applied to that

officer instead of to the adjutant general or assistant adjutant general.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2979 [derived from § 281].)

§ 10215. Officers of Army National Guard of the United States and Air National Guard of the United States: authority with respect to Federal status

(a)(1) Officers of the Army National Guard of the United States who are not on active duty—

(A) may order members of the Army National Guard of the United States to active duty for training under section 12301(d) of this title; and

(B) with the approval of the Secretary of the Air Force, may order members of the Air National Guard of the United States to active duty for training under that section.

(2) Officers of the Air National Guard of the United States who are not on active duty—

(A) may order members of the Air National Guard of the United States to active duty for training under section 12301(d) of this title; and

(B) with the approval of the Secretary of the Army, may order members of the Army National Guard of the United States to active duty for training under that section.

(b) Officers of the Army National Guard of the United States or the Air National Guard of the United States who are not on active duty—

(1) may enlist, reenlist, or extend the enlistments of persons as Reserves of the Army or Reserves of the Air Force for service in the Army National Guard of the United States or the Air National Guard of the United States, as the case may be; and

(2) with respect to their Federal status, may promote or discharge persons enlisted or reenlisted as Reserves of the Army or Reserves of the Air Force for that service.

(c) This section shall be carried out under regulations prescribed by the Secretary of the Army, with respect to matters concerning the Army, and by the Secretary of the Air Force, with respect to matters concerning the Air Force.

(Added P.L. 103–337, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2979 [derived from §§ 3080, 8080].)

§ 10216. Military technicians (dual status)

(a) IN GENERAL.—(1) For purposes of this section and any other provision of law, a military technician (dual status) is a Federal civilian employee who—

(A) is employed under section 3101 of title 5 or section 709(b) of title 32;

(B) is required as a condition of that employment to maintain membership in the Selected Reserve; and

(C) is assigned to a civilian position as a technician in the administration and training of the Selected Reserve or in the maintenance and repair of supplies or equipment issued to the Selected Reserve or the armed forces.

(2) Military technicians (dual status) shall be authorized and accounted for as a separate category of civilian employees.

(b) PRIORITY FOR MANAGEMENT OF MILITARY TECHNICIANS (DUAL STATUS).—(1) As a basis for making the annual request to Congress pursuant to section 115(g) of this title for authorization of end strengths for military technicians (dual status) of the Army and Air Force reserve components, the Secretary of Defense shall give priority to supporting authorizations for military technicians (dual status) in the following high-priority units and organizations:

(A) Units of the Selected Reserve that are scheduled to deploy no later than 90 days after mobilization.

(B) Units of the Selected Reserve that are or will deploy to relieve active duty peacetime operations tempo.

(C) Those organizations with the primary mission of providing direct support surface and aviation maintenance for the reserve components of the Army and Air Force, to the extent that the military technicians (dual status) in such units would mobilize and deploy in a skill that is compatible with their civilian position skill.

(2) For each fiscal year, the Secretary of Defense shall, for the high-priority units and organizations referred to in paragraph (1), seek to achieve a programmed manning level for military technicians (dual status) that is not less than 90 percent of the programmed manpower structure for those units and organizations for military technicians (dual status) for that fiscal year.

(3) Military technician (dual status) authorizations and personnel shall be exempt from any requirement (imposed by law or otherwise) for reductions in Department of Defense civilian personnel and shall only be reduced as part of military force structure reductions.

(c) INFORMATION REQUIRED TO BE SUBMITTED WITH ANNUAL END STRENGTH AUTHORIZATION REQUEST.—(1) The Secretary of Defense shall include as part of the budget justification documents submitted to Congress with the budget of the Department of Defense for any fiscal year the following information with respect to the end strengths for military technicians (dual status) requested in that budget pursuant to section 115(g) of this title, shown separately for each of the Army and Air Force reserve components:

(A) The number of military technicians (dual status) in the high priority units and organizations specified in subsection (b)(1).

(B) The number of technicians other than military technicians (dual status) in the high priority units and organizations specified in subsection (b)(1).

(C) The number of military technicians (dual status) in other than high priority units and organizations specified in subsection (b)(1).

(D) The number of technicians other than military technicians (dual status) in other than high priority units and organizations specified in subsection (b)(1).

(2)(A) If the budget submitted to Congress for any fiscal year requests authorization for that fiscal year under section 115(g) of this title of a military technician (dual status) end strength for a reserve component of the Army or Air Force in a number that constitutes a reduction from the end strength minimum established by law for that reserve component for the fiscal year during which the

budget is submitted, the Secretary of Defense shall submit to the congressional defense committees with that budget a justification providing the basis for that requested reduction in technician end strength.

(B) Any justification submitted under subparagraph (A) shall clearly delineate the specific force structure reductions forming the basis for such requested technician reduction (and the numbers related to those reductions).

(d) UNIT MEMBERSHIP REQUIREMENT.—(1) Unless specifically exempted by law, each individual who is hired as a military technician (dual status) after December 1, 1995, shall be required as a condition of that employment to maintain membership in—

(A) the unit of the Selected Reserve by which the individual is employed as a military technician; or

(B) a unit of the Selected Reserve that the individual is employed as a military technician to support.

(2) Paragraph (1) does not apply to a military technician (dual status) who is employed by the Army Reserve in an area other than Army Reserve troop program units.

(e) DUAL STATUS REQUIREMENT.—(1) Funds appropriated for the Department of Defense may not (except as provided in paragraph (2)) be used for compensation as a military technician of any individual hired as a military technician (dual status) after February 10, 1996, who is no longer a member of the Selected Reserve.

(2) Except as otherwise provided by law, the Secretary concerned may pay compensation described in paragraph (1) to an individual described in that paragraph who is no longer a member of the Selected Reserve for a period up to 12 months following the individual's loss of membership in the Selected Reserve if the Secretary determines that such loss of membership was not due to the failure of that individual to meet military standards.

(Added P.L. 104–106, § 513(c)(1), Feb. 10, 1996, 110 Stat. 306; amended P.L. 104–201, §§ 413(b),(c), 1214, Sept. 23, 1996, 110 Stat. 2507, 2695; P.L. 105–85, § 522(a), (b), (f)–(h)(1), Nov. 18, 1997, 111 Stat. 1734–1736; P.L. 106–65, § 521, Oct. 5, 1999, 113 Stat. 595.)

§ 10217. Non-dual status technicians [1]

(a) DEFINITION.—For the purposes of this section and any other provision of law, a non-dual status technician is a civilian employee

[1] Subsections (d) and (e) section 523 of the National Defense Authorization Act for Fiscal Year 1998 (P.L. 105–85; 111 Stat. 1737) provide:

(d) PLAN FOR FULL UTILIZATION OF MILITARY TECHNICIANS (DUAL STATUS).—(1) Not later than 180 days after [Nov. 18, 1997], the Secretary of Defense shall submit to Congress a plan for ensuring that, on and after September 30, 2007, all military technician positions are held only by military technicians (dual status).

(2) The plan shall provide for achieving, by September 30, 2002, a 50 percent reduction, by conversion of positions or otherwise, in the number of non-dual status military technicians that are holding military technicians positions, as compared with the number of non-dual status technicians that held military technician positions as of September 30, 1997, as specified in the report under subsection (c).

(3) Among the alternative actions to be considered in developing the plan, the Secretary shall consider the feasibility and cost of each of the following:

(A) Eliminating or consolidating technician functions and positions.

(B) Contracting with private sector sources for the performance of functions performed by military technicians.

(C) Converting non-dual status military technician positions to military technician (dual status) positions or to positions in the competitive service or, in the case of positions of the Army National Guard of the United States or the Air National Guard of the United States, to positions of State employment.

(D) Use of incentives to facilitate attainment of the objectives specified for the plan in paragraphs (1) and (2).

of the Department of Defense serving in a military technician position who—

(1) was hired as a technician before November 18, 1997, under any of the authorities specified in subsection (b) and as of that date is not a member of the Selected Reserve or after such date has ceased to be a member of the Selected Reserve; or

(2) is employed under section 709 of title 32 in a position designated under subsection (c) of that section and when hired was not required to maintain membership in the Selected Reserve.

(b) EMPLOYMENT AUTHORITIES.—The authorities referred to in subsection (a) are the following:

(1) Section 10216 of this title.

(2) Section 709 of title 32.

(3) The requirements referred to in section 8401 of title 5.

(4) Section 8016 of the Department of Defense Appropriations Act, 1996 (Public Law 104–61; 109 Stat. 654), and any comparable provision of law enacted on an annual basis in the Department of Defense Appropriations Acts for fiscal years 1984 through 1995.

(5) Any memorandum of agreement between the Department of Defense and the Office of Personnel Management providing for the hiring of military technicians.

(c) PERMANENT LIMITATIONS ON NUMBER.—(1) Effective October 1, 2007, the total number of non-dual status technicians employed by the Army Reserve and Air Force Reserve may not exceed 175. If at any time after the preceding sentence takes effect the number of non-dual status technicians employed by the Army Reserve and Air Force Reserve exceeds the number specified in the limitation in the preceding sentence, the Secretary of Defense shall require that the Secretary of the Army or the Secretary of the Air Force, or both, take immediate steps to reduce the number of such technicians in order to comply with such limitation.

(2) Effective October 1, 2002, the total number of non-dual status technicians employed by the National Guard may not exceed 1,950. If at any time after the preceding sentence takes effect the number of non-dual status technicians employed by the National Guard exceeds the number specified in the limitation in the preceding sentence, the Secretary of Defense shall require that the Secretary of the Army or the Secretary of the Air Force, or both, take immediate steps to reduce the number of such technicians in order to comply with such limitation.

(Added P.L. 105–85, § 523(a)(1), Nov. 18, 1997, 111 Stat. 1736; amended P.L. 106–65, § 523, Oct. 5, 1999, 113 Stat. 598; P.L. 106–398, § 1[414(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–94.)

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(4) The Secretary shall submit with the plan any recommendations for legislation that the Secretary considers necessary to carry out the plan.

(e) DEFINITIONS FOR CATEGORIES OF MILITARY TECHNICIANS.—In this section:

(1) The term "non-dual status military technician" has the meaning given that term in section 10217 of title 10, United States Code, as added by subsection (a).

(2) The term "military technician (dual status)" has the meaning given the term in section 10216(a) of such title.

§ 10218. Army and Air Force Reserve technicians: conditions for retention; mandatory retirement under civil service laws

(a) SEPARATION AND RETIREMENT OF MILITARY TECHNICIANS (DUAL STATUS).—(1) An individual employed by the Army Reserve or the Air Force Reserve as a military technician (dual status) who after October 5, 1999, loses dual status is subject to paragraph (2) or (3), as the case may be.

(2) If a technician described in paragraph (1) is eligible at the time dual status is lost for an unreduced annuity and is age 60 or older at that time, the technician shall be separated not later than 30 days after the date on which dual status is lost.

(3)(A) If a technician described in paragraph (1) is not eligible at the time dual status is lost for an unreduced annuity or is under age 60 at that time, the technician shall be offered the opportunity to—

(i) reapply for, and if qualified be appointed to, a position as a military technician (dual status); or

(ii) apply for a civil service position that is not a technician position.

(B) If such a technician continues employment with the Army Reserve or the Air Force Reserve as a non-dual status technician, the technician—

(i) shall not be permitted, after October 5, 2000, to apply for any voluntary personnel action; and

(ii) shall be separated or retired—

(I) in the case of a technician first hired as a military technician (dual status) on or before February 10, 1996, not later than 30 days after becoming eligible for an unreduced annuity and becoming 60 years of age; and

(II) in the case of a technician first hired as a military technician (dual status) after February 10, 1996, not later than one year after the date on which dual status is lost.

(4) For purposes of this subsection, a military technician is considered to lose dual status upon—

(A) being separated from the Selected Reserve; or

(B) ceasing to hold the military grade specified by the Secretary concerned for the position held by the technician.

(b) NON-DUAL STATUS TECHNICIANS.—(1) An individual who on October 5, 1999, is employed by the Army Reserve or the Air Force Reserve as a non-dual status technician and who on that date is eligible for an unreduced annuity and is age 60 or older shall be separated not later than April 5, 2000.

(2)(A) An individual who on October 5, 1999, is employed by the Army Reserve or the Air Force Reserve as a non-dual status technician and who on that date is not eligible for an unreduced annuity or is under age 60 shall be offered the opportunity to—

(i) reapply for, and if qualified be appointed to, a position as a military technician (dual status); or

(ii) apply for a civil service position that is not a technician position.

(B) If such a technician continues employment with the Army Reserve or the Air Force Reserve as a non-dual status technician, the technician—

(i) shall not be permitted, after October 5, 2000, to apply for any voluntary personnel action; and

(ii) shall be separated or retired—

(I) in the case of a technician first hired as a technician on or before February 10, 1996, and who on October 5, 1999, is a non-dual status technician, not later than 30 days after becoming eligible for an unreduced annuity and becoming 60 years of age; and

(II) in the case of a technician first hired as a technician after February 10, 1996, and who on October 5, 1999, is a non-dual status technician, not later than one year after the date on which dual status is lost.

(3) An individual employed by the Army Reserve or the Air Force Reserve as a non-dual status technician who is ineligible for appointment to a military technician (dual status) position, or who decides not to apply for appointment to such a position, or who, during the period beginning on October 5, 1999, and ending on April 5, 2000, is not appointed to such a position, shall for reduction-in-force purposes be in a separate competitive category from employees who are military technicians (dual status).

(c) UNREDUCED ANNUITY DEFINED.—For purposes of this section, a technician shall be considered to be eligible for an unreduced annuity if the technician is eligible for an annuity under section 8336, 8412, or 8414 of title 5 that is not subject to a reduction by reason of the age or years of service of the technician.

(d) VOLUNTARY PERSONNEL ACTION DEFINED.—In this section, the term "voluntary personnel action", with respect to a non-dual status technician, means any of the following:

(1) The hiring, entry, appointment, reassignment, promotion, or transfer of the technician into a position for which the Secretary concerned has established a requirement that the person occupying the position be a military technician (dual status).

(2) Promotion to a higher grade if the technician is in a position for which the Secretary concerned has established a requirement that the person occupying the position be a military technician (dual status).

(Added P.L. 106–65, § 552(a), Oct. 5, 1999, 113 Stat. 595; amended P.L. 106–398, § 1[525(a), 1087(a)(20)], Oct. 30, 2000, 114 Stat. 1654, 1654A–108, 1654A–291.)

CHAPTER 1009—RESERVE FORCES POLICY BOARDS AND COMMITTEES

Sec.
10301. Reserve Forces Policy Board.
10302. Army Reserve Forces Policy Committee.
10303. Naval Reserve Policy Board.
10304. Marine Corps Reserve Policy Board.
10305. Air Force Reserve Forces Policy Committee.

§ 10301. Reserve Forces Policy Board

(a) There is in the Office of the Secretary of Defense a Reserve Forces Policy Board. The Board consists of the following:

(1) A civilian chairman appointed by the Secretary of Defense.

(2) The Assistant Secretary of the Army for Manpower and Reserve Affairs, the Assistant Secretary of the Navy for Manpower and Reserve Affairs, and the Assistant Secretary of the Air Force for Manpower and Reserve Affairs.

(3) An officer of the Regular Army designated by the Secretary of the Army.

(4) An officer of the Regular Navy and an officer of the Regular Marine Corps, each designated by the Secretary of the Navy.

(5) An officer of the Regular Air Force designated by the Secretary of the Air Force.

(6) Four reserve officers designated by the Secretary of Defense upon the recommendation of the Secretary of the Army, two of whom must be members of the Army National Guard of the United States, and two of whom must be members of the Army Reserve.

(7) Four reserve officers designated by the Secretary of Defense upon the recommendation of the Secretary of the Navy, two of whom must be members of the Naval Reserve, and two of whom must be members of the Marine Corps Reserve.

(8) Four reserve officers designated by the Secretary of Defense upon the recommendation of the Secretary of the Air Force, two of whom must be members of the Air National Guard of the United States, and two of whom must be members of the Air Force Reserve.

(9) A reserve officer of the Army, Navy, Air Force, or Marine Corps who is a general officer or flag officer designated by the Chairman of the Board with the approval of the Secretary of Defense, and who serves without vote as military adviser to the Chairman and as executive officer of the Board.

(10) An officer of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps serving in a position on the Joint Staff who is designated by the Chairman of the Joint Chiefs of Staff.

(b) Whenever the Coast Guard is not operating as a service in the Navy, the Secretary of Transportation may designate two officers of the Coast Guard, Regular or Reserve, to serve as voting members of the Board.

(c) The Board, acting through the Assistant Secretary of Defense for Reserve Affairs, is the principal policy adviser to the Secretary of Defense on matters relating to the reserve components.

(d) This section does not affect the committees on reserve policies prescribed within the military departments by sections 10302 through 10305 of this title.

(e) A member of a committee or board prescribed under a section listed in subsection (d) may, if otherwise eligible, be a member of the Reserve Forces Policy Board.

(f) The Board shall act on those matters referred to it by the Chairman and, in addition, on any matter raised by a member of the Board.

(Added P.L. 103–337, § 1661(b)(1), Oct. 5, 1994, 108 Stat. 2980 [derived from § 175].)

§ 10302. Army Reserve Forces Policy Committee

(a) There is in the Office of the Secretary of the Army an Army Reserve Forces Policy Committee. The Committee shall review and comment upon major policy matters directly affecting the reserve components and mobilization preparedness of the Army. The Committee's comments on such policy matters shall accompany the final report regarding any such matters submitted to the Secretary of the Army and the Chief of Staff.

(b) The Committee consists of officers in the grade of colonel or above, as follows:

(1) five members of the Regular Army on duty with the Army General Staff;

(2) five members of the Army National Guard of the United States not on active duty; and

(3) five members of the Army Reserve not on active duty.

(c) The members of the Committee shall select the Chairman from among the members on the Committee not on active duty.

(d) A majority of the members of the Committee shall act whenever matter affecting both the Army National Guard of the United States and Army Reserve are being considered. However, when any matter solely affecting one of the reserve components of the Army is being considered, it shall be acted upon only by the Subcommittee on Army National Guard Policy or the Subcommittee on Army Reserve Policy, as appropriate.

(e) The Subcommittee on Army National Guard Policy consists of the members of the Committee other than the Army Reserve members.

(f) The Subcommittee on Army Reserve Policy consists of the members of the Committee other than the Army National Guard members.

(g) Membership on the Committee is determined by the Secretary of the Army and is for a minimum period of three years. Except in the case of members of the Committee from the Regular Army, the Secretary of the Army, when appointing new members, shall insure that among the officers of each component on the Com-

mittee there will at all times be two or more members with more than one year of continuous service on the Committee.

(h) There shall be not less than 10 officers of the Army National Guard of the United States and the Army Reserve on duty with the Army Staff, one-half of whom shall be from each of those components. These officers shall be considered as additional members of the Army Staff while on that duty.

(Aug. 10, 1956, § 3033, ch. 1041, 70A Stat. 161; Sept. 2, 1958, P.L. 85–861, § 33(a)(17), 72 Stat. 1565; Dec. 1, 1967, P.L. 90–168, § 2(18), 81 Stat. 524; transferred, redesignated § 3021, and amended P.L. 99–433, § 501(a)(8), Oct. 1, 1986, 100 Stat. 1039; transferred and redesignated § 10302 P.L. 103–337, § 1661(b)(2)(A), Oct. 5, 1994, 108 Stat. 2981.)

§ 10303. Naval Reserve Policy Board

A Naval Reserve Policy Board shall be convened at least once annually at the seat of government to consider, recommend, and report to the Secretary of the Navy on reserve policy matters. At least half of the members of the Board must be officers of the Naval Reserve.

(Added P.L. 103–337, § 1661(b)(1), Oct. 5, 1994, 108 Stat. 2981 [derived from § 5251(c)].)

§ 10304. Marine Corps Reserve Policy Board

A Marine Corps Reserve Policy Board shall be convened at least once annually at the seat of government to consider, recommend, and report to the Secretary of the Navy on reserve policy matters. At least half of the members of the Board must be officers of the Marine Corps Reserve.

(Added P.L. 103–337, § 1661(b)(1), Oct. 5, 1994, 108 Stat. 2981 [derived from § 5252(c)].)

§ 10305. Air Force Reserve Forces Policy Committee

(a) There is in the Office of the Secretary of the Air Force an Air Reserve Forces Policy Committee on Air National Guard and Air Force Reserve Policy. The Committee shall review and comment upon major policy matters directly affecting the reserve components and the mobilization prepardness of the Air Force. The Committee's comments on such policy matters shall accompany the final report regarding any such matters submitted to the Secretary of the Air Force and the Chief of Staff.

(b) The committee consists of officers in the grade of colonel or above, as follows:

(1) five members of the Regular Air Force on duty with the Air Staff;

(2) five members of the Air National Guard of the United States not on active duty;

(3) five members of the Air Force Reserve not on active duty.

(c) The members of the Committee shall select the Chairman from among the members on the Committee not on active duty.

(d) A majority of the members of the Committee shall act whenever matters affecting both the Air National Guard of the United States and Air Force Reserve are being considered. However, when any matter solely affecting one of the Air Force Reserve components is being considered, it shall be acted upon only by the Subcommittee on Air National Guard Policy or the Subcommittee on Air Force Reserve Policy, as appropriate.

(e) The Subcommittee on Air National Guard Policy consists of the members of the Committee other than the Air Force Reserve members.

(f) The Subcommittee on Air Force Reserve Policy consists of the members of the Committee other than the Air National Guard members.

(g) Membership on the Air Staff Committee is determined by the Secretary of the Air Force and is for a minimum period of three years. Except in the case of members of the Committee from the Regular Air Force, the Secretary of the Air Force, when appointing new members, shall insure that among the officers of each component on the Committee there will at all times be two or more members with more than one year of continuous service on the Committee.

(h) There shall be not less than 10 officers of the Air National Guard of the United States and the Air Force Reserve on duty with the Air Staff, one-half of whom shall be from each of those components. These officers shall be considered as additional members of the Air Staff while on that duty.

(Aug. 10, 1956, § 8033, ch. 1041, 70A Stat. 491; Sept. 2, 1958, P.L. 85–861, § 33(a)(17), 72 Stat. 1565; Dec. 1, 1967, P.L. 90–168, § 2(21), 81 Stat. 525; transferred, redesignated § 8021, and amended P.L. 99–433, § 521(a)(6), Oct. 1, 1986, 100 Stat. 1059; transferred and redesignated § 10305 P.L. 103–337, § 1661(b)(2)(B), Oct. 5, 1994, 108 Stat. 2981.)

CHAPTER 1011—NATIONAL GUARD BUREAU

Sec.
10501. National Guard Bureau.
10502. Chief of the National Guard Bureau: appointment; adviser on National Guard matters; grade.
10503. Functions of National Guard Bureau: charter from Secretaries of the Army and Air Force.
10504. Chief of National Guard Bureau: annual report.
10505. Vice Chief of the National Guard Bureau.
10506. Other senior National Guard Bureau officers.
10507. National Guard Bureau: assignment of officers of regular or reserve components.
[10508. Repealed.]

§ 10501. National Guard Bureau

(a) NATIONAL GUARD BUREAU.—There is in the Department of Defense the National Guard Bureau, which is a joint bureau of the Department of the Army and the Department of the Air Force.

(b) PURPOSES.—The National Guard Bureau is the channel of communications on all matters pertaining to the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States between (1) the Department of the Army and Department of the Air Force, and (2) the several States.

(Added P.L. 103–337, § 904(a), Oct. 5, 1994, 108 Stat. 2824 [derived from § 3040(a)].)

§ 10502. Chief of the National Guard Bureau: appointment; adviser on National Guard matters; grade

(a) APPOINTMENT.—There is a Chief of the National Guard Bureau, who is responsible for the organization and operations of the National Guard Bureau. The Chief of the National Guard Bureau is appointed by the President, by and with the advice and consent of the Senate. Such appointment shall be made from officers of the Army National Guard of the United States or the Air National Guard of the United States who—

(1) are recommended for such appointment by their respective Governors or, in the case of the District of Columbia, the commanding general of the District of Columbia National Guard;

(2) have had at least 10 years of federally recognized commissioned service in an active status in the National Guard; and

(3) are in a grade above the grade of brigadier general.

(b) TERM OF OFFICE.—An officer appointed as Chief of the National Guard Bureau serves at the pleasure of the President for a term of four years. An officer may not hold that office after becoming 64 years of age. An officer may be reappointed as Chief of the National Guard Bureau. While holding that office, the Chief of the National Guard Bureau may not be removed from the reserve ac-

tive-status list, or from an active status, under any provision of law that otherwise would require such removal due to completion of a specified number of years of service or a specified number of years of service in grade.

(c) ADVISER ON NATIONAL GUARD MATTERS.—The Chief of the National Guard Bureau is the principal adviser to the Secretary of the Army and the Chief of Staff of the Army, and to the Secretary of the Air Force and the Chief of Staff of the Air Force, on matters relating to the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States.

(d) GRADE.—The Chief of the National Guard Bureau shall be appointed to serve in the grade of lieutenant general.

(Added P.L. 103–337, § 904(a), Oct. 5, 1994, 108 Stat. 2824.)

§ 10503. Functions of National Guard Bureau: charter from Secretaries of the Army and Air Force

The Secretary of the Army and the Secretary of the Air Force shall jointly develop and prescribe a charter for the National Guard Bureau. The charter shall cover the following matters:

(1) Allocating unit structure, strength authorizations, and other resources to the Army National Guard of the United States and the Air National Guard of the United States.

(2) Prescribing the training discipline and training requirements for the Army National Guard and the Air National Guard and the allocation of Federal funds for the training of the Army National Guard and the Air National Guard.

(3) Ensuring that units and members of the Army National Guard and the Air National Guard are trained by the States in accordance with approved programs and policies of, and guidance from, the Chief, the Secretary of the Army, and the Secretary of the Air Force.

(4) Monitoring and assisting the States in the organization, maintenance, and operation of National Guard units so as to provide well-trained and well-equipped units capable of augmenting the active forces in time of war or national emergency.

(5) Planning and administering the budget for the Army National Guard of the United States and the Air National Guard of the United States.

(6) Supervising the acquisition and supply of, and accountability of the States for, Federal property issued to the National Guard through the property and fiscal officers designated, detailed, or appointed under section 708 of title 32.

(7) Granting and withdrawing, in accordance with applicable laws and regulations, Federal recognition of (A) National Guard units, and (B) officers of the National Guard.

(8) Establishing policies and programs for the employment and use of National Guard technicians under section 709 of title 32.

(9) Supervising and administering the Active Guard and Reserve program as it pertains to the National Guard.

(10) Issuing directives, regulations, and publications consistent with approved policies of the Army and Air Force, as appropriate.

(11) Facilitating and supporting the training of members and units of the National Guard to meet State requirements.

(12) Such other functions as the Secretaries may prescribe.

(Added P.L. 103–337, § 904(a), Oct. 5, 1994, 108 Stat. 2825.)

§ 10504. Chief of National Guard Bureau: annual report

(a) ANNUAL REPORT.—The Chief of the National Guard Bureau shall submit to the Secretary of Defense, through the Secretaries of the Army and the Air Force, an annual report on the state of the National Guard and the ability of the National Guard to meet its missions. The report shall be prepared in conjunction with the Secretary of the Army and the Secretary of the Air Force and may be submitted in classified and unclassified versions.

(b) SUBMISSION OF REPORT TO CONGRESS.—The Secretary of Defense shall transmit the annual report of the Chief of the National Guard Bureau to Congress, together with such comments on the report as the Secretary considers appropriate. The report shall be transmitted at the same time each year that the annual report of the Secretary under section 113(c) of this title is submitted to Congress.

(Added P.L. 103–337, § 904(a), Oct. 5, 1994, 108 Stat. 2825.)

§ 10505. Vice Chief of the National Guard Bureau

(a) APPOINTMENT.—(1) There is a Vice Chief of the National Guard Bureau, selected by the Secretary of Defense from officers of the Army National Guard of the United States or the Air National Guard of the United States who—

(A) are recommended for such appointment by their respective Governors or, in the case of the District of Columbia, the commanding general of the District of Columbia National Guard;

(B) have had at least 10 years of federally recognized commissioned service in an active status in the National Guard; and

(C) are in a grade above the grade of colonel.

(2) The Chief and Vice Chief of the National Guard Bureau may not both be members of the Army or of the Air Force.

(3)(A) Except as provided in subparagraph (B), an officer appointed as Vice Chief of the National Guard Bureau serves for a term of four years, but may be removed from office at any time for cause.

(B) The term of the Vice Chief of the National Guard Bureau shall end upon the appointment of a Chief of the National Guard Bureau who is a member of the same armed force as the Vice Chief.

(4) The Secretary of Defense may waive the restrictions in paragraph (2) and the provisions of paragraph (3)(B) for a limited period of time to provide for the orderly transition of officers appointed to serve in the positions of Chief and Vice Chief of the National Guard Bureau.

(b) DUTIES.—The Vice Chief of the National Guard Bureau performs such duties as may be prescribed by the Chief of the National Guard Bureau.

(c) GRADE.—The Vice Chief of the National Guard Bureau shall be appointed to serve in the grade of major general.

(d) FUNCTIONS AS ACTING CHIEF.—When there is a vacancy in the office of the Chief of the National Guard Bureau or in the absence or disability of the Chief, the Vice Chief of the National Guard Bureau acts as Chief and performs the duties of the Chief until a successor is appointed or the absence or disability ceases.

(e) SUCCESSION AFTER CHIEF AND VICE CHIEF.—When there is a vacancy in the offices of both Chief and Vice Chief of the National Guard Bureau or in the absence or disability of both the Chief and Vice Chief of the National Guard Bureau, or when there is a vacancy in one such office and in the absence or disability of the officer holding the other, the senior officer of the Army National Guard of the United States or the Air National Guard of the United States on duty with the National Guard Bureau shall perform the duties of the Chief until a successor to the Chief or Vice Chief is appointed or the absence or disability of the Chief or Vice Chief ceases, as the case may be.

(Added P.L. 103–337, § 904(a), Oct. 5, 1994, 108 Stat. 2826.)

§ 10506. Other senior National Guard Bureau officers

(a) ADDITIONAL GENERAL OFFICERS.—(1) In addition to the Chief and Vice Chief of the National Guard Bureau, there shall be assigned to the National Guard Bureau—

(A) two general officers selected by the Secretary of the Army from officers of the Army National Guard of the United States who have been nominated by their respective Governors or, in the case of the District of Columbia, the commanding general of the District of Columbia National Guard, the senior of whom shall be appointed in accordance with paragraph (3), shall hold the grade of lieutenant general while so serving, and shall serve as Director, Army National Guard, with the other serving as Deputy Director, Army National Guard; and

(B) two general officers selected by the Secretary of the Air Force from officers of the Air National Guard of the United States who have been nominated by their respective Governors or, in the case of the District of Columbia, the commanding general of the District of Columbia National Guard, the senior of whom shall be appointed in accordance with paragraph (3), shall hold the grade of lieutenant general while so serving, and shall serve as Director, Air National Guard, with the other serving as Deputy Director, Air National Guard.

(2) The officers so selected shall assist the Chief of the National Guard Bureau in carrying out the functions of the National Guard Bureau as they relate to their respective branches.

(3)(A) The President, by and with the advice and consent of the Senate, shall appoint the Director, Army National Guard, from general officers of the Army National Guard of the United States and shall appoint the Director, Air National Guard, from general officers of the Air National Guard of the United States.

(B) The Secretary of Defense may not recommend an officer to the President for appointment as Director, Army National Guard, or as Director, Air National Guard, unless the officer—

(i) is recommended by the Secretary of the military department concerned; and

(ii) is determined by the Chairman of the Joint Chiefs of Staff, in accordance with criteria and as a result of a process established by the Chairman, to have significant joint duty experience.

(C) An officer on active duty for service as the Director, Army National Guard, or the Director, Air National Guard, shall be counted for purposes of the grade limitations under sections 525 and 526 of this title.

(D) Until October 1, 2003, the Secretary of Defense may waive clause (ii) of subparagraph (B) with respect to the appointment of an officer as Director, Army National Guard, or as Director, Air National Guard, if the Secretary of the military department concerned requests the waiver and, in the judgment of the Secretary of Defense—

(i) the officer is qualified for service in the position; and

(ii) the waiver is necessary for the good of the service.

Any such waiver shall be made on a case-by-case basis.

(E) The Director, Army National Guard, and the Director, Air National Guard, are appointed for a period of four years, but may be removed for cause at any time. An officer serving as either Director may be reappointed for one additional four-year period.

(b) OTHER OFFICERS.—There are in the National Guard Bureau a legal counsel, a comptroller, and an inspector general, each of whom shall be appointed by the Chief of the National Guard Bureau. They shall perform such duties as the Chief may prescribe.

(Added P.L. 103–337, § 904(a), Oct. 5, 1994, 108 Stat. 2827; amended P.L. 106–65, § 554(f), Oct. 5, 1999, 113 Stat. 617; P.L. 106–398, § 1[507(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A–105.)

§ 10507. National Guard Bureau: assignment of officers of regular or reserve components

Except as provided in section 12402(b) of this title, the President may assign to duty in the National Guard Bureau as many regular or reserve officers of the Army or Air Force as he considers necessary.

(Added P.L. 103–337, § 1661(c)(1)(A), Oct. 5, 1994, 108 Stat. 2982 [derived from §§ 3541, 8541]; amended P.L. 104–106, § 1501(b)(6), Feb. 10, 1996, 110 Stat. 496.)

[§ 10508. Repealed. P.L. 104–106, § 1501(b)(7)(A), Feb. 10, 1996, 110 Stat. 496]

CHAPTER 1013—BUDGET INFORMATION AND ANNUAL REPORTS TO CONGRESS

Sec.
10541. National Guard and reserve component equipment: annual report to Congress.
10542. Army National Guard combat readiness: annual report.
10543. National Guard and reserve component equipment procurement and military construction funding: inclusion in future-years defense program.

§ 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 February 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.

(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.

(Added as § 115b P.L. 101–510, § 1483(a), Nov. 5, 1990, 104 Stat. 1714 [former § 115(a)(2), (3)]; amended P.L. 102–484, § 1134, Oct. 23, 1992, 106 Stat. 2541; transferred, redesignated § 10541, and amended P.L. 103–337, § 1661(d)(2), Oct. 5, 1994, 108 Stat. 2982.)

§ 10542. Army National Guard combat readiness: annual report

(a) IN GENERAL.—The Secretary of the Army shall include in the annual report of the Secretary to Congress known as the Army Posture Statement a detailed presentation concerning the Army National Guard, including particularly information relating to the implementation of the Army National Guard Combat Readiness Reform Act of 1992 (title XI of Public Law 102–484; 106 Stat. 2536) (hereinafter in this section referred to as "ANGCRRA").[1]

(b) MATTERS TO BE INCLUDED IN REPORT.—Each presentation under subsection (a) shall include, with respect to the period covered by the report, the following information concerning the Army National Guard:

(1) The number and percentage of officers with at least two years of active-duty before becoming a member of the Army National Guard.

(2) The number and percentage of enlisted personnel with at least two years of active-duty before becoming a member of the Army National Guard.

(3) The number of officers who are graduates of one of the service academies and were released from active duty before

[1] The Army National Guard Combat Readiness Reform Act of 1992, referred to in section 10542, is set out at the end of chapter 1003 (following section 10114).

the completion of their active-duty service obligation and, of those officers—

(A) the number who are serving the remaining period of their active-duty service obligation as a member of the Selected Reserve pursuant to section 1112(a)(1) of ANGCRRA; and

(B) the number for whom waivers were granted by the Secretary under section 1112(a)(2) of ANGCRRA, together with the reason for each waiver.

(4) The number of officers who were commissioned as distinguished Reserve Officers' Training Corps graduates and were released from active duty before the completion of their active-duty service obligation and, of those officers—

(A) the number who are serving the remaining period of their active-duty service obligation as a member of the Selected Reserve pursuant to section 1112(a)(1) of ANGCRRA; and

(B) the number for whom waivers were granted by the Secretary under section 1112(a)(2) of ANGCRRA, together with the reason for each waiver.

(5) The number of officers who are graduates of the Reserve Officers' Training Corps program and who are performing their minimum period of obligated service in accordance with section 1112(b) of ANGCRRA by a combination of (A) two years of active duty, and (B) such additional period of service as is necessary to complete the remainder of such obligation served in the National Guard and, of those officers, the number for whom permission to perform their minimum period of obligated service in accordance with that section was granted during the preceding fiscal year.

(6) The number of officers for whom recommendations were made during the preceding fiscal year for a unit vacancy promotion to a grade above first lieutenant and, of those recommendations, the number and percentage that were concurred in by an active-duty officer under section 1113(a) of ANGCRRA, shown separately for each of the three categories of officers set forth in section 1113(b) of ANGCRRA.

(7) The number of waivers during the preceding fiscal year under section 1114(a) of ANGCRRA of any standard prescribed by the Secretary establishing a military education requirement for noncommissioned officers and the reason for each such waiver.

(8) The number and distribution by grade, shown for each State, of personnel in the initial entry training and nondeployability personnel accounting category established under section 1115 of ANGCRRA for members of the Army National Guard who have not completed the minimum training required for deployment or who are otherwise not available for deployment.

(9) The number of members of the Army National Guard, shown for each State, that were discharged during the previous fiscal year pursuant to section 1115(c)(1) of ANGCRRA for not completing the minimum training required for deployment within 24 months after entering the National Guard.

(10) The number of waivers, shown for each State, that were granted by the Secretary during the previous fiscal year under section 1115(c)(2) of ANGCRRA of the requirement in section 1115(c)(1) of ANGCRRA described in paragraph (9), together with the reason for each waiver.

(11) The number of members, shown for each State, who were screened during the preceding fiscal year to determine whether they meet minimum physical profile standards required for deployment and, of those members—

(A) the number and percentage who did not meet minimum physical profile standards required for deployment; and

(B) the number and percentage who were transferred pursuant to section 1116 of ANGCRRA to the personnel accounting category described in paragraph (8).

(12) The number of members, and the percentage of the total membership, of the Army National Guard, shown for each State, who underwent a medical screening during the previous fiscal year as provided in section 1117 of ANGCRRA.

(13) The number of members, and the percentage of the total membership, of the Army National Guard, shown for each State, who underwent a dental screening during the previous fiscal year as provided in section 1117 of ANGCRRA.

(14) The number of members, and the percentage of the total membership, of the Army National Guard, shown for each State, over the age of 40 who underwent a full physical examination during the previous fiscal year for purposes of section 1117 of ANGCRRA.

(15) The number of units of the Army National Guard that are scheduled for early deployment in the event of a mobilization and, of those units, the number that are dentally ready for deployment in accordance with section 1118 of ANGCRRA.

(16) The estimated post-mobilization training time for each Army National Guard combat unit, and a description, displayed in broad categories and by State, of what training would need to be accomplished for Army National Guard combat units in a post-mobilization period for purposes of section 1119 of ANGCRRA.

(17) A description of the measures taken during the preceding fiscal year to comply with the requirement in section 1120 of ANGCRRA to expand the use of simulations, simulators, and advanced training devices and technologies for members and units of the Army National Guard.

(18) Summary tables of unit readiness, shown for each State, and drawn from the unit readiness rating system as required by section 1121 of ANGCRRA, including the personnel readiness rating information and the equipment readiness assessment information required by that section, together with—

(A) explanations of the information shown in the table; and

(B) based on the information shown in the tables, the Secretary's overall assessment of the deployability of units of the Army National Guard, including a discussion of per-

sonnel deficiencies and equipment shortfalls in accordance with such section 1121.

(19) Summary tables, shown for each State, of the results of inspections of units of the Army National Guard by inspectors general or other commissioned officers of the Regular Army under the provisions of section 105 of title 32, together with explanations of the information shown in the tables, and including display of—

(A) the number of such inspections;

(B) identification of the entity conducting each inspection;

(C) the number of units inspected; and

(D) the overall results of such inspections, including the inspector's determination for each inspected unit of whether the unit met deployability standards and, for those units not meeting deployability standards, the reasons for such failure and the status of corrective actions.

(20) A listing, for each Army National Guard combat unit, of the active-duty combat unit associated with that Army National Guard unit in accordance with section 1131(a) of ANGCRRA, shown by State and to be accompanied, for each such National Guard unit, by—

(A) the assessment of the commander of that associated active-duty unit of the manpower, equipment, and training resource requirements of that National Guard unit in accordance with section 1131(b)(3) of ANGCRRA; and

(B) the results of the validation by the commander of that associated active-duty unit of the compatibility of that National Guard unit with active duty forces in accordance with section 1131(b)(4) of ANGCRRA.

(21) A specification of the active-duty personnel assigned to units of the Selected Reserve pursuant to section 414(c) of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (10 U.S.C. 12001 note), shown (A) by State, (B) by rank of officers, warrant officers, and enlisted members assigned, and (C) by unit or other organizational entity of assignment.

[(c) Repealed. P.L. 103–337, § 1661(d)(3), Oct. 5, 1994, 108 Stat. 2982.]

[(d) Repealed. P.L. 104–106, § 1501(b)(8), Feb 10, 1996, 110 Stat. 496.]

(Added as § 3082 P.L. 103–160, § 521(a), Nov. 30, 1993, 107 Stat. 1652; transferred, redesignated § 10542, and amended P.L. 103–337, § 1661(d)(3), Oct. 5, 1994, 108 Stat. 2982; amended P.L. 104–106, § 1501(b)(8), Feb. 10, 1996, 110 Stat. 496; P.L. 104–201, § 1074(a)(21), Sept. 23, 1996, 110 Stat. 2660.)

§ 10543. National Guard and reserve component equipment procurement and military construction funding: inclusion in future-years defense program [2]

(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 15 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 P.L. 104–201, § 1257(a)(1), Sept. 23, 1996, 110 Stat. 2699; amended P.L. 105–85, § 1009(a), Nov. 18, 1997, 111 Stat. 1872; P.L. 106–398, § 1[931], Oct. 30, 2000, 114 Stat. 1654, 1654A–237.)

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[2] Section 1009(b) of the National Defense Authorization Act for Fiscal Year 1998 (P.L. 105–85; 111 Stat. 1872) provides:

(b) PROHIBITION.—The level of detail provided for procurement and military construction in the future-years defense programs for fiscal years after fiscal year 1998 may not be less than the level of detail provided for procurement and military construction in the future-years defense program for fiscal year 1998.

PART II—PERSONNEL GENERALLY

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CHAPTER 1201—AUTHORIZED STRENGTHS AND DISTRIBUTION IN GRADE [1]

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[1] Subsections (a) through (c) of section 414 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (P.L. 102–190), as amended, provide:

(a) PROGRAM REQUIRED.—The Secretary of the Army shall carry out a pilot program to provide active component advisers to combat units, combat support units, and combat service support units in the Selected Reserve of the Ready Reserve that have a high priority for deployment on a time-phased troop deployment list or have another contingent high priority for deployment. The advisers shall be assigned to full-time duty in connection with organizing, administering, recruiting, instructing, or training such units.

(b) OBJECTIVES OF PROGRAM.—The objectives of the program are as follows:

(1) To improve the readiness of units in the reserve components of the Army.

(2) To increase substantially the number of active component personnel directly advising reserve component unit personnel.

(3) To provide a basis for determining the most effective mix of reserve component personnel and active component personnel in organizing, administering, recruiting, instructing, or training reserve component units.

(4) To provide a basis for determining the most effective mix of active component officer and enlisted personnel in advising reserve component units regarding organizing, administering, recruiting, instructing, or training reserve component units.

(c) PERSONNEL TO BE ASSIGNED.—(1) The Secretary shall assign not less than 5,000 active component personnel to serve as advisers under the program.

(2) The Secretary of Defense may count toward the number of active component personnel required under paragraph (1) to be assigned to serve as advisers under the program under this section any active component personnel who are assigned to an active component unit (A) that was established principally for the purpose of providing dedicated training support to reserve component units, and (B) the primary mission of which is to provide such dedicated training support.

Section 517(b) of the National Defense Authorization Act for Fiscal Year 1994 (P.L. 103–160; 107 Stat. 1651), provides:

(b) ANNUAL REPORT ON IMPLEMENTATION.—(1) The Secretary of the Army shall include in the annual report of the Secretary to Congress known as the Army Posture Statement a presentation relating to the implementation of the Pilot Program for Active Component Support of the Reserves under section 414 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102–190; 10 U.S.C. 261 [now 12001] note), as amended by subsection (a) [set out above].

Continued

§ 12001. Authorized strengths: reserve components [2]

(a) Whenever the authorized strength of a reserve component (other than the Coast Guard Reserve) is not prescribed by law, it shall be prescribed by the President.

(b) Subject to the authorized strength of the reserve component concerned, the authorized strength of each reserve component (other than the Coast Guard Reserve) in members in each grade is that which the Secretary concerned determines to be necessary to provide for mobilization requirements. The Secretary shall review these determinations at least once each year and revise them if he considers it necessary. However, a member of the reserve component concerned may not, as a result of such a determination, be reduced in the member's reserve grade without the member's consent.

(Added P.L. 103–337, § 1662(a)(1), Oct. 5, 1994, 108 Stat. 2983 [derived from §§ 3221, 3224, 5413, 5426, 8221, 8224].)

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(2) Each such presentation shall include, with respect to the period covered by the report, the following information:

(A) The promotion rate for officers considered for promotion from within the promotion zone who are serving as active component advisers to units of the Selected Reserve of the Ready Reserve (in accordance with that program) compared with the promotion rate for other officers considered for promotion from within the promotion zone in the same pay grade and the same competitive category, shown for all officers of the Army.

(B) The promotion rate for officers considered for promotion from below the promotion zone who are serving as active component advisers to units of the Selected Reserve of the Ready Reserve (in accordance with that program) compared in the same manner as specified in subparagraph (A).

[2] Sections 411 and 412 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654A–93) provide:

SEC. 411. END STRENGTHS FOR SELECTED RESERVE.

(a) IN GENERAL.—The Armed Forces are authorized strengths for Selected Reserve personnel of the reserve components as of September 30, 2001, as follows:

(1) The Army National Guard of the United States, 350,526.
(2) The Army Reserve, 205,300.
(3) The Naval Reserve, 88,900.
(4) The Marine Corps Reserve, 39,558.
(5) The Air National Guard of the United States, 108,022.
(6) The Air Force Reserve, 74,358.
(7) The Coast Guard Reserve, 8,000.

(b) ADJUSTMENTS.—The end strengths prescribed by subsection (a) for the Selected Reserve of any reserve component shall be proportionately reduced by—

(1) the total authorized strength of units organized to serve as units of the Selected Reserve of such component which are on active duty (other than for training) at the end of the fiscal year; and

(2) the total number of individual members not in units organized to serve as units of the Selected Reserve of such component who are on active duty (other than for training or for unsatisfactory participation in training) without their consent at the end of the fiscal year.

Whenever such units or such individual members are released from active duty during any fiscal year, the end strength prescribed for such fiscal year for the Selected Reserve of such reserve component shall be proportionately increased by the total authorized strengths of such units and by the total number of such individual members.

SEC. 412. END STRENGTHS FOR RESERVES ON ACTIVE DUTY IN SUPPORT OF THE RESERVES.

Within the end strengths prescribed in section 411(a), the reserve components of the Armed Forces are authorized, as of September 30, 2001, the following number of Reserves to be serving on full-time active duty or full-time duty, in the case of members of the National Guard, for the purpose of organizing, administering, recruiting, instructing, or training the reserve components:

(1) The Army National Guard of the United States, 22,974.
(2) The Army Reserve, 13,106.
(3) The Naval Reserve, 14,649.
(4) The Marine Corps Reserve, 2,261.
(5) The Air National Guard of the United States, 11,170.
(6) The Air Force Reserve, 1,336.

§ 12002. Authorized strengths: Army and Air Force reserve components, exclusive of members on active duty

(a) The authorized strengths of the National Guard and the reserve components of the Army and the Air Force, exclusive of members who are included in the strengths authorized for members of the Army and Air Force, respectively, on active duty, are as follows:

Army National Guard and the Army National Guard of the United States	600,000
Army Reserve	980,000
Air National Guard and the Air National Guard of the United States	150,000
Air Force Reserve	500,000.

(b) The strength authorized by this section for the Army National Guard and the Army National Guard of the United States, and the strength authorized by this section for the Air National Guard and the Air National Guard of the United States, shall be allocated among the States.

(Added P.L. 103–337, § 1662(a)(1), Oct. 5, 1994, 108 Stat. 2983 [derived from §§ 3222, 3225, 8222, 8225].)

§ 12003. Authorized strengths: commissioned officers in an active status

(a) The authorized strengths of the Army, Navy, Air Force, and Marine Corps in reserve commissioned officers, other than commissioned warrant officers and officers on an active-duty list, in an active status are as follows:

Army	275,000
Air Force	200,000
Navy	150,000
Marine Corps	24,500.

(b) The authorized strengths prescribed by subsection (a) may not be exceeded unless—

(1) the Secretary concerned determines that a greater number is necessary for planned mobilization requirements; or

(2) the excess results directly from the operation of a nondiscretionary provision of law.

(Added P.L. 103–337, § 1662(a)(1), Oct. 5, 1994, 108 Stat. 2984 [derived from §§ 3217, 5415, 8217].)

§ 12004. Strength in grade: reserve general and flag officers in an active status

(a) The authorized strengths of the Army, Air Force, and Marine Corps in reserve general officers in an active status, and the authorized strength of the Navy in reserve officers in the grades of rear admiral (lower half) and rear admiral in an active status, are as follows:

Army	207
Air Force	157
Navy	48
Marine Corps	10.

(b) The following Army and Air Force reserve officers shall not be counted for purposes of this section:

(1) Those serving as adjutants general or assistant adjutants general of a State.

(2) Those serving in the National Guard Bureau.

(3) Those counted under section 526 of this title.

(c)(1) The authorized strength of the Navy under subsection (a) is exclusive of officers counted under section 526 of this title. Of the number authorized under subsection (a), 39 are distributed among the line and the staff corps as follows:

Line	28
Medical Department staff corps	9
Chaplain Corps	1
Judge Advocate General's Corps	1

(2) The remaining authorizations for the Navy under subsection (a) shall be distributed among such other staff corps as are established by the Secretary of the Navy under the authority provided by section 5150(b) of this title, except that—

(A) if the Secretary has established a Supply Corps, the authorized strength for the Supply Corps shall be seven; and

(B) if the Secretary has established a Civil Engineering Corps, the authorized strength for the Civil Engineering Corps shall be two.

(3) Not more than 50 percent of the officers in an active status authorized under this section for the Navy may serve in the grade of rear admiral.

(4)(A) For the purposes of paragraph (1), the Medical Department staff corps referred to in the table are as follows:

(i) The Medical Corps.

(ii) The Dental Corps.

(iii) The Nurse Corps.

(iv) The Medical Service Corps.

(B) Each of the Medical Department staff corps is authorized one rear admiral (lower half) within the strength authorization distributed to the Medical Department staff corps under paragraph (1). The Secretary of the Navy shall distribute the remainder of the strength authorization for the Medical Department staff corps under that paragraph among those staff corps as the Secretary determines appropriate to meet the needs of the Navy.

(d) The authorized strength of the Marine Corps under subsection (a) is exclusive of those counted under section 526 of this title.

(e)(1) A reserve general officer of the Army or Air Force may not be reduced in grade because of a reduction in the number of general officers authorized under subsection (a).

(2) An officer of the Naval Reserve or the Marine Corps Reserve may not be reduced in permanent grade because of a reduction in the number authorized by this section for his grade.

(Added P.L. 103–337, § 1662(a)(1), Oct. 5, 1994, 108 Stat. 2984 [derived from §§ 3218, 5457(a), 5458(a), 8218]; P.L. 104–106, § 1501(b)(9), Feb. 10, 1996, 110 Stat. 496; P.L. 105–261, § 415, Oct. 17, 1998, 112 Stat. 1998.)

§ 12005. Strength in grade: commissioned officers in grades below brigadier general or rear admiral (lower half) in an active status

(a)(1) Subject to paragraph (2), the authorized strength of the Army and the Air Force in reserve commissioned officers in an active status in each grade named in paragraph (2) is as prescribed

by the Secretary of the Army or the Secretary of the Air Force, respectively. A vacancy in any grade may be filled by an authorized appointment in any lower grade.

(2) A strength prescribed by the Secretary concerned under paragraph (1) for a grade may not be higher than the percentage of the strength authorized for the Army or the Air Force, as the case may be, under section 12003 of this title that is specified for that grade as follows:

Grade	Army percentage	Air Force percentage
Colonel	2	1.8
Lieutenant colonel	6	4.6
Major	13	14.0
Captain	35	32.0
First lieutenant and second lieutenant (when combined with the number authorized for general officer grades under section 12004 of this title)	44	47.6

(3) Medical officers and dental officers shall not be counted for the purposes of this subsection.

(b)(1) The authorized strengths of the Naval Reserve in line officers in an active status in the grades of captain, commander, lieutenant commander, and lieutenant, and in the grades of lieutenant (junior grade) and ensign combined, are the following percentages of the total authorized number of those officers:

Captain	1.5 percent
Commander	7 percent
Lieutenant commander	22 percent
Lieutenant	37 percent
Lieutenant (junior grade) and ensign (when combined with the number authorized for flag officer grades under section 12004 of this title)	32.5 percent.

(2) When the actual number of line officers in an active status in any grade is less than the number authorized by paragraph (1) for that grade, the difference may be applied to increase the number authorized by that paragraph for any lower grade or grades.

(c)(1) The authorized strengths of the Marine Corps Reserve in officers in an active status in the grades of colonel, lieutenant colonel, major, and captain, and in the grades of first lieutenant and second lieutenant combined, are the following percentages of the total authorized number of those officers:

Colonel	2 percent
Lieutenant colonel	6 percent
Major	12 percent
Captain	35 percent
First lieutenant and second lieutenant (when combined with the number authorized for general officer grades under section 12004 of this title)	32.5 percent.

(2) When the actual number of officers in an active status in any grade is less than the number authorized by paragraph (1) for that grade, the difference may be applied to increase the number authorized by that paragraph for any lower grade or grades.

(d)(1) An officer of the Army or Air Force may not be reduced in grade because of a reduction in the number of commissioned officers authorized for the officer's grade under this section.

(2) An officer of the Naval Reserve or the Marine Corps Reserve may not be reduced in permanent grade because of a reduction in the number authorized by this section for his grade.

(Added P.L. 103–337, § 1662(a)(1), Oct. 5, 1994, 108 Stat. 2985 [derived from §§ 3219, 5457(b)–(d), 5458(b)–(d), 8219]; amended P.L. 106–398, § 1[423], Oct. 30, 2000, 114 Stat. 1654, 1654A–96.)

§ 12006. Strength limitations: authority to waive in time of war or national emergency

(a) In time of war, or of national emergency declared by Congress or the President, the President may suspend the operation of any provision of section 12003, 12004, or 12005 of this title. So long as any such war or national emergency continues, any such suspension may be extended by the President.

(b) Any suspension under subsection (a) shall, if not sooner ended, end on the last day of the two-year period beginning on the date on which the suspension (or the last extension thereof) takes effect or on the last day of the one-year period beginning on the date of the termination of the war or national emergency, whichever occurs first. With respect to the end of any such suspension, the preceding sentence supersedes the provisions of title II of the National Emergencies Act (50 U.S.C. 1621, 1622) which provide that powers or authorities exercised by reason of a national emergency shall cease to be exercised after the date of termination of the emergency.

(Added P.L. 103–337, § 1662(a)(1), Oct. 5, 1994, 108 Stat. 2986.)

§ 12007. Reserve officers of the Army: distribution

The Secretary of the Army shall distribute the number of reserve commissioned officers, other than commissioned warrant officers, authorized in each commissioned grade between those assigned to reserve units organized to serve as units and those not assigned to such units. The Secretary shall distribute the number who are assigned to reserve units organized to serve as units among the units of each reserve component by prescribing appropriate tables of organization and tables of distribution. The Secretary shall distribute the number who are not assigned to such units between—

(1) each special branch; and

(2) all other branches taken together.

(Added P.L. 103–337, § 1662(a)(1), Oct. 5, 1994, 108 Stat. 2986 [derived from § 3220].)

§ 12008. Army Reserve and Air Force Reserve: warrant officers

The Secretary of the Army may prescribe the authorized strength of the Army Reserve in warrant officers. The Secretary of the Air Force may prescribe the authorized strength of the Air Force Reserve in warrant officers.

(Added P.L. 103–337, § 1662(a)(1), Oct. 5, 1994, 108 Stat. 2987 [derived from §§ 3223, 8223].)

§ 12009. Army and Air Force reserve components: temporary increases

(a) The authorized strength in any reserve grade, as prescribed under this chapter, for any reserve component under the jurisdiction of the Secretary of the Army or the Secretary of the Air Force is automatically increased to the minimum extent necessary to give effect to each appointment made in that grade under section 1211(a), 3036, 14304(b), 14314, or 14317 of this title.

(b) An authorized strength so increased is increased for no other purpose. While an officer holds that grade, the officer whose appointment caused the increase is counted for the purpose of determining when other appointments, not under those sections, may be made in that grade.

(Added P.L. 103–337, § 1662(a)(1), Oct. 5, 1994, 108 Stat. 2987 [derived from §§ 3212, 8212].)

§ 12010. Computations for Naval Reserve and Marine Corps Reserve: rule when fraction occurs in final result

When there is a fraction in the final result of any computation under this chapter for the Naval Reserve or the Marine Corps Reserve, a fraction of one-half or more is counted as one, and a fraction of less than one-half is disregarded.

(Added P.L. 103–337, § 1662(a)(1), Oct. 5, 1994, 108 Stat. 2987 [derived from § 5454].)

§ 12011. Authorized strengths: reserve officers on active duty or on full-time National Guard duty for administration of the reserves or the National Guard

(a) The number of reserve officers of the Army, Air Force, and Marine Corps who may be on active duty or full-time National Guard duty in each of the grades of major, lieutenant colonel, and colonel, and of the Navy who may be on active duty in each of the grades of lieutenant commander, commander, and captain, as of the end of any fiscal year for duty described in subclauses (B) and (C) of section 523(b)(1) of this title or full-time National Guard duty (other than for training) under section 502(f) of title 32 may not exceed the number for that grade and armed force in the following table:

Grade	Army	Navy	Air Force	Marine Corps
Major or Lieutenant Commander	3,316	1,071	948	140
Lieutenant Colonel or Commander	1,759	520	852	90
Colonel or Navy Captain	529	188	317	30

(b) Whenever the number of officers serving in any grade is less than the number authorized for that grade under this section, the difference between the two numbers may be applied to increase the number authorized under this section for any lower grade.

(c) Whenever under section 527 of this title the President may suspend the operation of any provision of section 523, 525, or 526 of this title, the Secretary of Defense may suspend the operation of any provision of this section. Any such suspension shall, if not sooner ended, end in the manner specified in section 527 for a suspension under that section.

(d) Upon increasing under subsection (c)(2) of section 115 of this title the end strength that is authorized under subsection (a)(1)(B) of that section for a fiscal year for active-duty personnel and full-time National Guard duty personnel of an armed force who are to be paid from funds appropriated for reserve personnel, the Secretary of Defense may increase for that fiscal year the limitation that is set forth in subsection (a) of this section for the number of officers of that armed force serving in any grade if the Secretary determines that such action is in the national interest. The percent of the increase may not exceed the percent by which the Secretary increases that end strength.

(Added as § 524 P.L. 96–513, § 103, Dec. 12, 1980, 94 Stat. 2844; amended P.L. 97–86, § 503(b), Dec. 1, 1981, 95 Stat. 1108; P.L. 97–252, § 503(b), Sept. 8, 1982, 96 Stat. 727; P.L. 98–94, § 503, Sept. 24, 1983, 97 Stat. 631; P.L. 98–525, §§ 413(b), 414(a)(4), Oct. 19, 1984, 98 Stat. 2518; P.L. 99–145, § 413(b), Nov. 8, 1985, 99 Stat. 619; P.L. 100–180, § 413(b), Dec. 4, 1987, 101 Stat. 1083; P.L. 101–189, § 413(b), Nov. 29, 1989, 103 Stat. 1433; P.L. 102–190, § 413(b), Dec. 5, 1991, 105 Stat. 1352; P.L. 103–160, § 413(b), Nov. 30, 1993, 107 Stat. 1642; transferred, redesignated § 12011, and amended P.L. 103–337, § 1662(a)(2), Oct. 5, 1994, 108 Stat. 2988; P.L. 104–106, § 414(a), Feb. 10, 1996, 110 Stat. 288; P.L. 105–261, § 414(a), Oct. 17, 1998, 112 Stat. 1998; P.L. 106–65, § 414(a), Oct. 5, 1999, 113 Stat. 586; P.L. 106–398, § 1[415(a), 421(b), 424(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–94, 1654A–95, 1654A–96.)

§ 12012. Authorized strengths: senior enlisted members on active duty or on full-time National Guard duty for administration of the reserves or the National Guard

(a) The number of enlisted members in pay grades E–8 and E–9 who may be on active duty (other than for training) or on full-time National Guard duty under the authority of section 502(f) of title 32 (other than for training) as of the end of any fiscal year in connection with organizing, administering, recruiting, instructing, or training the reserve components or the National Guard may not exceed the number for that grade and armed force in the following table:

Grade	Army	Navy	Air Force	Marine Corps
E–9	764	202	502	20
E–8	2,821	429	1,117	94

(b) Whenever the number of members serving in pay grade E–9 for duty described in subsection (a) is less than the number authorized for that grade under subsection (a), the difference between the two numbers may be applied to increase the number authorized under such subsection for pay grade E–8.

(c) Whenever under section 527 of this title the President may suspend the operation of any provision of section 523, 525, or 526 of this title, the Secretary of Defense may suspend the operation of any provision of this section. Any such suspension shall, if not sooner ended, end in the manner specified in section 527 for a suspension under that section.

(d) Upon increasing under subsection (c)(2) of section 115 of this title the end strength that is authorized under subsection (a)(1)(B) of that section for a fiscal year for active-duty personnel and full-time National Guard duty personnel of an armed force who

are to be paid from funds appropriated for reserve personnel, the Secretary of Defense may increase for that fiscal year the limitation that is set forth in subsection (a) of this section for the number of enlisted members of that armed force serving in any grade if the Secretary determines that such action is in the national interest. The percent of the increase may not exceed the percent by which the Secretary increases that end strength.

(Added P.L. 103–337, § 1662(a)(1), Oct. 5, 1994, 108 Stat. 2987 [derived from § 517(b), (c)]; amended P.L. 104–106, §§ 414(b), 1501(b)(10), Feb. 10, 1996, 110 Stat. 288, 496; P.L. 105–261, § 414(b), Oct. 17, 1998, 112 Stat. 1998; P.L. 106–65, § 414(b), Oct. 5, 1999, 113 Stat. 586; P.L. 106–398, § 1[415(b), 421(c), 424(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–94, 1654A–95, 1654A–96.)

CHAPTER 1203—ENLISTED MEMBERS

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§ 12101. Definition

In this chapter, the term "enlistment" means original enlistment or reenlistment.

(Added P.L. 103–337, § 1662(b)(1), Oct. 5, 1994, 108 Stat. 2988.)

§ 12102. Reserve components: qualifications

(a) To become an enlisted member of a reserve component a person must be enlisted as a Reserve of an armed force and subscribe to the oath prescribed by section 502 of this title, or be transferred to that component according to law. In addition, to become an enlisted member of the Army National Guard of the United States or the Air National Guard of the United States, he must meet the requirements of section 12107 of this title.

(b) Except as otherwise provided by law, the Secretary concerned shall prescribe physical, mental, moral, professional, and age qualifications for the enlistment of persons as Reserves of the armed forces under his jurisdiction. However, no person may be enlisted as a Reserve unless—

(1) he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); or

(2) he has previously served in the armed forces or in the National Security Training Corps.

(c) A person who is otherwise qualified, but who has a physical defect that the Secretary concerned determines will not interfere with the performance of the duties to which that person may be assigned, may be enlisted as a Reserve of any armed force under the jurisdiction of that Secretary.

(Aug. 10, 1956, § 510, ch. 1041, 70A Stat. 17; Dec. 23, 1963, P.L. 88–236, 77 Stat. 474; Nov. 8, 1967, P.L. 90–130, § 1(2), 81 Stat. 374; Oct. 22, 1968, P.L. 90–623, § 2(3), 82 Stat. 1314; Dec. 12, 1980, P.L. 96–513, § 511(13), 94 Stat. 2921; transferred, redesignated § 12102, and amended P.L. 103–337, §§ 1631(a), 1662(b)(2), 1675(a), Oct. 5, 1994, 108 Stat. 2964, 2989, 3017.)

§ 12103. Reserve components: terms

(a) Except as otherwise prescribed by law, enlistments as Reserves are for terms prescribed by the Secretary concerned. However, an enlistment that is in effect at the beginning of a war or

of a national emergency declared by Congress, or entered into during such a war or emergency, and that would otherwise expire, continues in effect until the expiration of six months after the end of that war or emergency, whichever is later, unless sooner terminated by the Secretary concerned.

(b) Under regulations to be prescribed by the Secretary of Defense, and by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, a person who is qualified for enlistment for active duty in an armed force, and who is not under orders to report for induction into an armed force under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), may be enlisted as a Reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve, for a term of not less than six years nor more than eight years. Each person enlisted under this subsection shall serve—

(1) on active duty for a period of not less than two years; and

(2) the rest of his period of enlistment as a member of the Ready Reserve.

(c) In time of war or of national emergency declared by Congress the term of service of an enlisted member transferred to a reserve component according to law, that would otherwise expire, continues until the expiration of six months after the end of that war or emergency, whichever is later, unless sooner terminated by the Secretary concerned.

(d) Under regulations to be 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, a nonprior-service person who is qualified for induction for active duty in an armed force and who is not under orders to report for induction into an armed force under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), except as provided in section 6(c)(2)(A)(ii) and (iii) of such Act, may be enlisted in the Army National Guard or the Air National Guard, or as a Reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve, for a term of not less than six years nor more than eight years. Each person enlisted under this subsection shall perform an initial period of active duty for training of not less than twelve weeks to commence insofar as practicable within 270 days after the date of that enlistment.

(Aug. 10, 1956, § 511, ch. 1041, 70A Stat. 18; Sept. 2, 1958, P.L. 85–861, § 1(8), 72 Stat. 1439; Sept. 3, 1963, P.L. 88–110, § 3, 77 Stat. 135; Dec. 1, 1967, P.L. 90–168, § 2(11), 81 Stat. 523; Oct. 7, 1975, P.L. 94–106, § 802(a), 89 Stat. 537; Oct. 20, 1978, P.L. 95–485, § 405(c)(1), 92 Stat. 1615; Nov. 9, 1979, P.L. 96–107, § 805(a), 93 Stat. 812; Dec. 12, 1980, P.L. 96–513, § 511(14), 94 Stat. 2921; Sept. 8, 1982, P.L. 97–252, § 1115(a), 96 Stat. 750; Oct. 12, 1982, P.L. 97–295, § 1(6), 96 Stat. 1289; Sept. 24, 1983, P.L. 98–94, § 1022(a)(1), 97 Stat. 670; transferred and redesignated § 12103, P.L. 103–337, § 1662(b)(2), Oct. 5, 1994, 108 Stat. 2989.)

§ 12104. Reserve components: transfers

(a) A person who would otherwise be required to be transferred to a reserve component under section 651 of this title or under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), is entitled, if he is qualified and accepted, to be enlisted in any armed force that he chooses and to participate in the programs authorized for that armed force. However, unless the two Secretaries con-

cerned consent, he may not be enlisted as a Reserve of an armed force other than that from which he is transferred. All periods of his participation shall be credited against the total period of service required of him under section 651 of this title or under the Military Selective Service Act (50 U.S.C. App. 451 et seq.). However, no period may be credited more than once.

(b) A person covered by subsection (a) shall perform the rest of his required term of service in the armed force in which he is so enlisted or in any other armed force in which he is later enlisted or appointed.

(c) This section does not change any term of service under an appointment, enlistment, or agreement, including an agreement made before or at the time when the member entered upon a program authorized by an armed force.

(Aug. 10, 1956, § 512, ch. 1041, 70A Stat. 18; Dec. 12, 1980, P.L. 96–513, § 511(15), 94 Stat. 2921; transferred and redesignated § 12104, P.L. 103–337, § 1662(b)(2), Oct. 5, 1994, 108 Stat. 2989.)

§ 12105. Army Reserve and Air Force Reserve: transfer from Guard components

(a) Under such regulations as the Secretary concerned may prescribe—

(1) an enlisted member of the Army National Guard of the United States may be transferred in grade to the Army Reserve; and

(2) an enlisted member of the Air National Guard of the United States may be transferred in grade to the Air Force Reserve.

(b) Upon such a transfer, the member transferred is eligible for promotion to the highest regular or reserve grade ever held by him in the Army, if transferred under subsection (a)(1), or the Air Force, if transferred under subsection (a)(2), if his service has been honorable.

(c) A transfer under this section may only be made with the consent of the governor or other appropriate authority of the State concerned.

(Added P.L. 103–337, § 1662(b)(1), Oct. 5, 1994, 108 Stat. 2988 [derived from §§ 3259, 8259].)

§ 12106. Army and Air Force Reserve: transfer to upon withdrawal as member of National Guard

(a) An enlisted member of the Army National Guard of the United States who ceases to be a member of the Army National Guard becomes a member of the Army Reserve unless he is also discharged from his enlistment as a Reserve.

(b) An enlisted member of the Air National Guard of the United States who ceases to be a member of the Air National Guard becomes a member of the Air Force Reserve unless he is also discharged from his enlistment as a Reserve.

(c) An enlisted member who becomes a member of the Army Reserve or the Air Force Reserve under this section ceases to be a member of the Army National Guard of the United States or the Air National Guard of the United States, as the case may be.

(Added P.L. 103–337, § 1662(b)(1), Oct. 5, 1994, 108 Stat. 2989 [derived from §§ 3260, 8260].)

§ 12107. Army National Guard of United States; Air National Guard of the United States: enlistment in

(a) Except as provided in subsection (c), to become an enlisted member of the Army National Guard of the United States or the Air National Guard of the United States, a person must—

(1) be enlisted in the Army National Guard or the Air National Guard, as the case may be;

(2) subscribe to the oath set forth in section 304 of title 32; and

(3) be a member of a federally recognized unit or organization of the Army National Guard or the Air National Guard, as the case may be, in the grade in which he is to be enlisted as a Reserve.

(b)(1) Under regulations to be prescribed by the Secretary of the Army, a person who enlists in the Army National Guard, or whose term of enlistment in the Army National Guard is extended, shall be concurrently enlisted, or his term of enlistment shall be concurrently extended, as the case may be, as a Reserve of the Army for service in the Army National Guard of the United States.

(2) Under regulations to be prescribed by the Secretary of the Air Force, a person who enlists in the Air National Guard, or whose term of enlistment in the Air National Guard is extended, shall be concurrently enlisted, or his term of enlistment shall be concurrently extended, as the case may be, as a Reserve of the Air Force for service in the Air National Guard of the United States.

(c)(1) A member of the Army Reserve who enlists in the Army National Guard in his reserve grade, and is a member of a federally recognized unit or organization of the Army National Guard, becomes a member of the Army National Guard of the United States and ceases to be a member of the Army Reserve.

(2) A member of the Air Force Reserve who enlists in the Air National Guard in his reserve grade, and is a member of a federally recognized unit or organization of the Air National Guard, becomes a member of the Air National Guard of the United States and ceases to be a member of the Air Force Reserve.

(Added P.L. 103–337, § 1662(b)(1), Oct. 5, 1994, 108 Stat. 2989 [derived from §§ 3261, 8261].)

CHAPTER 1205—APPOINTMENT OF RESERVE OFFICERS

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§ 12201. Reserve officers: qualifications for appointment [1]

(a) To become an officer of a reserve component a person must be appointed as a Reserve of an armed force in a grade corresponding to a grade authorized for the regular component of the armed force concerned and subscribe to the oath prescribed by section 3331 of title 5. In addition, to become an officer of the Army National Guard of the United States or the Air National Guard of the United States, he must first be appointed to, and be federally recognized in, the same grade in the Army National Guard or the Air National Guard, as the case may be.

(b) Except as otherwise provided by law, the Secretary concerned shall prescribe physical, mental, moral, professional, and age qualifications for the appointment of persons as Reserves of the armed forces under his jurisdiction. However, no person may be appointed as a Reserve unless he is at least 18 years of age and—

(1) he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); or

(2) he has previously served in the armed forces or in the National Security Training Corps.

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[1] Section 524 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (P.L. 102–190, 105 Stat. 1363) provides:

SEC. 524. PRIORITY IN MAKING ORIGINAL APPOINTMENTS IN GUARD AND RESERVE COMPONENTS FOR ROTC SCHOLARSHIP PROGRAM GRADUATES.

In making appointments of persons as second lieutenants in the Army Reserve, Air Force Reserve, or Marine Corps Reserve or to the grade of ensign in the Naval Reserve, or in granting federal recognition in the grade of second lieutenant to members of the Army National Guard or Air National Guard, the Secretary of the military department concerned shall give preference to persons who have completed a post-secondary program of education pursued under a ROTC scholarship program at a college or university accredited to award baccalaureate degrees or pursued under a ROTC scholarship program at an accredited two-year or four-year military college.

(c) A person who is otherwise qualified, but who has a physical defect that the Secretary concerned determines will not interfere with the performance of the duties to which that person may be assigned, may be appointed as a Reserve of any armed force under the jurisdiction of that Secretary.

(d) In prescribing age qualifications under subsection (b) for the appointment of persons as Reserves of the armed forces under his jurisdiction, the Secretary concerned may not prescribe a maximum age qualification of less than 47 years of age for the initial appointment of a person as a Reserve to serve in health profession specialty which has been designated by the Secretary concerned as a specialty critically needed in wartime.

(Aug. 10, 1956, § 591, ch. 1041, 70A Stat. 24; Sept. 2, 1958, P.L. 85–861, § 1(10)(A), 72 Stat. 1440; Dec. 23, 1963, P.L. 88–236, 77 Stat. 474; Nov. 2, 1966, P.L. 89–718, § 4, 80 Stat. 1115; Nov. 8, 1967, P.L. 90–130, § 1(3), 81 Stat. 374; Dec. 12, 1980, P.L. 96–513, § 511(16), 94 Stat. 2921; Dec. 4, 1987, P.L. 100–180, § 718(a), 101 Stat. 1115; transferred, redesignated § 12201, and amended P.L. 103–337, §§ 1631(b), 1662(c)(2), Oct. 5, 1994, 108 Stat. 2964, 2990; Feb. 10, 1996, P.L. 104–106, § 1501(b)(11)(A), 110 Stat. 496.)

§ 12202. Commissioned officer grades

Except for commissioned warrant officers, the reserve commissioned officer grades in each armed force are those authorized for regular commissioned officers of that armed force.

(Added as § 592 P.L. 85–861, § 1(10)(B), Sept. 2, 1958, 72 Stat. 1440; transferred and redesignated § 12202 P.L. 103–337, § 1662(c)(2), Oct. 5, 1994, 108 Stat. 2990.)

§ 12203. Commissioned officers: appointment, how made; term

(a) Appointments of reserve officers in commissioned grades of lieutenant colonel and commander or below, except commissioned warrant officer, shall be made by the President alone. Appointments of reserve officers in commissioned grades above lieutenant colonel and commander shall be made by the President, by and with the advice and consent of the Senate, except as provided in section 624, 12213, or 12214 of this title.

(b) Appointments of Reserves in commissioned grades are for an indefinite term and are held during the pleasure of the President.

(Aug. 10, 1956, § 593, ch. 1041, 70A Stat. 25; Sept. 2, 1958, P.L. 85–861, § 1(10)(C), 72 Stat. 1440; Sept. 28, 1971, P.L. 92–129, § 601, 85 Stat. 361; Dec. 12, 1980, P.L. 96–513, § 501(7), 94 Stat. 2907; transferred, redesignated § 12203, and amended P.L. 103–337, §§ 1632, 1662(c)(2), 1675(b)(1), Oct. 5, 1994, 108 Stat. 2965, 2990, 3017.)

§ 12204. Commissioned officers: original appointment; limitation

(a) No person may be appointed as a Reserve in a commissioned grade above major or lieutenant commander, unless—

(1) he was formerly a commissioned officer of an armed force; or

(2) such an appointment is recommended by a board of officers convened by the Secretary concerned.

(b) This section does not apply to adjutants general and assistant adjutants general of the several States and Territories, Puerto Rico, and the District of Columbia.

(Aug. 10, 1956, § 594, ch. 1041, 70A Stat. 25; Sept. 29, 1988, P.L. 100–456, § 1234(a), 102 Stat. 2059; transferred and redesignated § 12204 P.L. 103–337, § 1662(c)(2), Oct. 5, 1994, 108 Stat. 2990.)

§ 12205. Commissioned officers: appointment; educational requirement

(a) IN GENERAL.—No person may be appointed to a grade above the grade of first lieutenant in the Army Reserve, Air Force Reserve, or Marine Corps Reserve or to a grade above the grade of lieutenant (junior grade) in the Naval Reserve, or be federally recognized in a grade above the grade of first lieutenant as a member of the Army National Guard or Air National Guard, unless that person has been awarded a baccalaureate degree by a qualifying educational institution.[2]

(b) EXCEPTIONS.—Subsection (a) does not apply to the following:

(1) The appointment to or recognition in a higher grade of a person who is appointed in or assigned for service in a health profession for which a baccalaureate degree is not a condition of original appointment or assignment.

(2) The appointment in the Naval Reserve or Marine Corps Reserve of a person appointed for service as an officer designated as a limited duty officer.

(3) The appointment in the Naval Reserve of a person appointed for service under the Naval Aviation Cadet (NAVCAD) program or the Seaman to Admiral program.

(4) The appointment to or recognition in a higher grade of any person who was appointed to, or federally recognized in, the grade of captain or, in the case of the Navy, lieutenant before October 1, 1995.

(5) Recognition in the grade of captain or major in the Alaska Army National Guard of a person who resides permanently at a location in Alaska that is more than 50 miles from each of the cities of Anchorage, Fairbanks, and Juneau, Alaska, by paved road and who is serving in a Scout unit or a Scout supporting unit.

(c) QUALIFYING EDUCATIONAL INSTITUTIONS.—(1) A qualifying educational institution for purposes of this section is an educational institution that is accredited or that meets the requirements of paragraph (2).

(2)(A) An unaccredited educational institution shall be considered to be a qualifying educational institution for purposes of the appointment or recognition of a person who is a graduate of that institution if the Secretary concerned determines that (as of the year of the graduation of that person from that institution) at least three educational institutions that are accredited and that main-

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[2] Section 516 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (P.L. 105–261; 112 Stat. 2008) provides:

SEC. 516. AUTHORITY FOR TEMPORARY WAIVER FOR CERTAIN ARMY RESERVE OFFICERS OF BACCALAUREATE DEGREE REQUIREMENT FOR PROMOTION OF RESERVE OFFICERS.

(a) WAIVER AUTHORITY FOR ARMY OCS GRADUATES.—The Secretary of the Army may waive the applicability of section 12205(a) of title 10, United States Code, to any officer who before [Oct. 17, 1998] was commissioned through the Army Officer Candidate School. Any such waiver shall be made on a case-by-case basis, considering the individual circumstances of the officer involved, and may continue in effect for no more than 2 years after the waiver is granted. The Secretary may provide for such a waiver to be effective before the date of the waiver, as appropriate in an individual case.

(b) EXPIRATION OF AUTHORITY.—A waiver under this section may not be granted after September 30, 2000.

tain Reserve Officers' Training Corps programs each generally grant baccalaureate degree credit for completion of courses of the unaccredited institution equivalent to the baccalaureate degree credit granted by the unaccredited institution for the completion of those courses.

(B) In order to assist the Secretary concerned in making determinations under subparagraph (A), any unaccredited institution that seeks to be considered to be a qualifying educational institution for purposes of this paragraph shall submit to the Secretary of Defense each year such information as the Secretary may require concerning the program of instruction at that institution.

(C) In the case of a person with a degree from an unaccredited institution that is a qualifying educational institution under this paragraph, the degree may not have been awarded more than eight years before the date on which the person is to be appointed to, or recognized in, the grade of captain or, in the case of the Naval Reserve, lieutenant, in order for that person to be considered for purposes of subsection (a) to have been awarded a baccalaureate degree by a qualifying educational institution.

(Added § 596 P.L. 102–484, § 626(a), Oct. 23, 1992, 106 Stat. 2406; amended, transferred, and redesignated § 12205 P.L. 103–337, §§ 519, 520, 1662(c)(2), Oct. 5, 1994, 108 Stat. 2755, 2990; P.L. 104–201, §§ 504, 505, 1074(a)(22), Sept. 23, 1996, 110 Stat. 2512, 2660.)

§ 12206. Commissioned officers: appointment of former commissioned officers

Under regulations prescribed by the Secretary of Defense, a person who is a former commissioned officer may, if otherwise qualified, be appointed as a reserve officer of the Army, Navy, Air Force, or Marine Corps. A person so appointed—

(1) may be placed on the reserve active-status list of that armed force in the grade equivalent to the permanent regular or reserve grade, and in the same competitive category, in which the person previously served satisfactorily on active duty or in an active status; and

(2) may be credited for the purpose of determining date of rank under section 741(d) of this title with service in grade equal to that held by that person when discharged or separated.

(Added as § 596a and transferred and redesignated § 12206 P.L. 103–337, §§ 1633, 1662(c)(2), Oct. 5, 1994 [effective Oct. 1, 1996], 108 Stat. 2965, 2990.)

§ 12207. Commissioned officers: service credit upon original appointment

(a)(1) For the purpose of determining the grade and the rank within grade of a person receiving an original appointment as a reserve commissioned officer (other than a commissioned warrant officer) in the Army, Navy, Air Force, or Marine Corps, the person shall be credited at the time of the appointment with any commissioned service (other than service as a commissioned warrant officer) performed before such appointment as a regular officer, or as a reserve officer in an active status, in any armed force, the National Oceanic and Atmospheric Administration, or the Public Health Service.

(2) The Secretary of Defense shall prescribe regulations, which shall apply uniformly among the Army, Navy, Air Force, and Ma-

rine Corps, to authorize the Secretary of the military department concerned to limit the amount of prior commissioned service with which a person receiving an original appointment may be credited under paragraph (1), or to deny any such credit, in the case of a person who at the time of such appointment is credited with constructive service under subsection (b).

(b)(1) Under regulations prescribed by the Secretary of Defense, a person who is receiving an original appointment as a reserve commissioned officer (other than a commissioned warrant officer) of the Army, Navy, Air Force, or Marine Corps, or a designation in, or an assignment to, an officer category in which advanced education or training is required and who has advanced education or training, shall be credited with constructive service for such education, training, or experience, as follows:

(A) One year for each year of advanced education beyond the baccalaureate degree level, for persons appointed or designated in, or assigned to, officer categories requiring such advanced education or an advanced degree as a prerequisite for such appointment, designation, or assignment. In determining the number of years of constructive service to be credited under this subparagraph to officers in any professional field, the Secretary concerned shall credit an officer with, but with not more than, the number of years of advanced education required by a majority of institutions that award degrees in that professional field for completion of the advanced education or award of the advanced degree.

(B)(i) Credit for any period of advanced education in a health profession (other than medicine and dentistry) beyond the baccalaureate degree level which exceeds the basic education criteria for such appointment, designation, or assignment, if such advanced education will be directly used by the armed force concerned.

(ii) Credit for experience in a health profession (other than medicine or dentistry), if such experience will be directly used by the armed force concerned.

(C) Additional credit of (i) not more than one year for internship or equivalent graduate medical, dental, or other formal health professional training required by the armed forces, and (ii) not more than one year for each additional year of such graduate-level training or experience creditable toward certification in a speciality required by the armed force concerned.

(D) Additional credit, in unusual cases, based on special experience in a particular field.

(E) Additional credit for experience as a physician or dentist, if appointed, assigned, or designated as a medical or dental officer.

(2) If the Secretary of Defense determines that the number of medical or dental officers serving in an active status in a reserve component of the Army, Navy, or Air Force in grades below major or lieutenant commander is critically below the number needed by such reserve component in such grades, the Secretary of Defense may authorize the Secretary of the military department concerned to credit any person who is receiving an original appointment for service as a medical or dental officer with a period of constructive

credit in such amount (in addition to any amount credited such person under subsection (b)) as will result in the grade of such person being that of captain or, in the case of the Naval Reserve, lieutenant.

(3) Except as authorized by the Secretary concerned in individual cases and under regulations prescribed by the Secretary of Defense in the case of a medical or dental officer, the amount of constructive service credited an officer under this subsection may not exceed the amount required in order for the officer to be eligible for an original appointment as a reserve officer of the Army, Air Force, or Marine Corps in the grade of major or as a reserve officer of the Navy in the grade of lieutenant commander.

(4) Constructive service credited an officer under this subsection is in addition to any service credited that officer under subsection (a) and shall be credited at the time of the original appointment of the officer or assignment to or designation in an officer category in which advanced education or training or special experience is required.

(c) Constructive service may not be credited under subsection (b) for education, training, or experience obtained while serving as a commissioned officer (other than a warrant officer) on active duty or in an active status. However, in the case of an officer who completes advanced education or receives an advanced degree while on active duty or in an active status and in less than the number of years normally required to complete such advanced education or receive such advanced degree, constructive service may, subject to regulations prescribed under subsection (a)(2), be credited to the officer under subsection (b)(1)(A) to the extent that the number of years normally required to complete such advanced education or receive such advanced degree exceeds the actual number of years in which such advanced education or degree is obtained by the officer.

(d) If the Secretary of Defense determines that the number of qualified judge advocates serving on the active-duty list of the Army, Navy, Air Force, or Marine Corps in grades below lieutenant commander or major is critically below the number needed by that armed force in those grades, the Secretary of Defense may authorize the Secretary of the military department concerned to credit any person who is receiving an original appointment with a view to assignment to the Judge Advocate General's Corps of the Army or appointment to the Judge Advocate General's Corps of the Navy, or who is receiving an original appointment in the Air Force or Marine Corps with a view to designation as a judge advocate, with a period of constructive service in such an amount (in addition to any amount credited such person under subsection (b)) as will result in the grade of such person being that of captain or, in the case of the Navy, lieutenant, and the date of rank of such person being junior to that of all other officers of the same grade serving on the active-duty list.

(e) Constructive service credited an officer under subsection (b) or (d) shall be used only for determining the officer's—

(1) initial grade as a reserve officer;

(2) rank in grade; and

(3) service in grade for promotion eligibility.

(f) The grade and position on the reserve active-status list of a person receiving an appointment as a reserve officer who at the time of appointment is credited with service under this section shall be determined under regulations prescribed by the Secretary of Defense based upon the amount of service credited.

(Added as § 596b and transferred and redesignated § 12207 P.L. 103–337, §§ 1634, 1662(c)(2), Oct. 5, 1994 [effective Oct. 1, 1996], 108 Stat. 2965, 2990.)

§ 12208. Officers: appointment upon transfer

(a) A person who would otherwise be required to be transferred to a reserve component under section 651 of this title or under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), is entitled, if he is qualified and accepted, to be appointed as an officer of any armed force that he chooses and to participate in the programs authorized for that armed force. However, unless the two Secretaries concerned consent, he may not be appointed as a Reserve of an armed force other than that from which he is transferred. All periods of his participation shall be credited against the total period of service required of him under section 651 of this title or under the Military Selective Service Act (50 U.S.C. App. 451 et seq.). However, no period may be credited more than once.

(b) A person covered by subsection (a) shall perform the rest of his required term of service in the armed force in which he is so appointed or in any other armed force in which he is later appointed or enlisted.

(c) This section does not change any term of service under an appointment, enlistment, or agreement, including an agreement made before or at the time when the member entered upon a program authorized by an armed force.

(Aug. 10, 1956, § 595, ch. 1041, 70A Stat. 25; Dec. 12, 1980, P.L. 96–513, § 511(17), 94 Stat. 2921; transferred and redesignated § 12208 P.L. 103–337, § 1662(c)(2), Oct. 5, 1994, 108 Stat. 2990.)

§ 12209. Officer candidates: enlisted Reserves

(a) Within such numbers as the Secretary concerned may prescribe, enlisted Reserves may, with their consent, be selected for training as officer candidates. Enlisted Reserves so selected shall be designated as officer candidates during that training. However, no member of the Army National Guard of the United States or the Air National Guard of the United States may be so selected or designated unless—

(1) he is on active duty; or

(2) the governor or other appropriate authority of the jurisdiction concerned consents.

(b) The enlistment or term of service of a Reserve who is designated as an officer candidate under this section is extended to include any period, beyond its normal expiration date, during which he is an officer candidate.

(c) While he is on active duty, other than active duty for training without pay, or performing authorized travel to and from that duty, an officer candidate designated under this section is entitled to the pay and allowances of his enlisted grade, but not less than those prescribed for pay grade E–2.

(d) An officer candidate designated under this section may not participate in the program of a reserve officer training corps of any armed force.

(Aug. 10, 1956, § 600, ch. 1041, 70A Stat. 26; transferred and redesignated § 12209 P.L. 103–337, § 1662(c)(3), Oct. 5, 1994, 108 Stat. 2990; amended P.L. 104–106, § 1501(b)(12)(A), Feb. 10, 1996, 110 Stat. 496.)

§ 12210. Attending Physician to the Congress: reserve grade while so serving

While serving as Attending Physician to the Congress, a Reserve who holds a reserve grade lower than major general or rear admiral shall hold the reserve grade of major general or rear admiral, as appropriate, if appointed to that grade by the President, by and with the advice and consent of the Senate.

(Added as § 600a P.L. 99–661, § 508(d), Nov. 14, 1986, 100 Stat. 3867; transferred and redesignated § 12210 P.L. 103–337, § 1662(c)(3), Oct. 5, 1994, 108 Stat. 2990; amended P.L. 104–106, § 1501(b)(12)(B), Feb. 10, 1996, 110 Stat. 496.)

§ 12211. Officers: Army National Guard of the United States

(a) Upon being federally recognized, an officer of the Army National Guard shall be appointed as a Reserve for service as a member of the Army National Guard of the United States in the grade that he holds in the Army National Guard. However, an officer of the Army Reserve who is federally recognized as an officer of the Army National Guard becomes an officer of the Army National Guard of the United States and ceases to be an officer of the Army Reserve. The acceptance of an appointment as a Reserve for service as a member of the Army National Guard of the United States by an officer of the Army National Guard does not vacate his office in the Army National Guard.

(b) When an officer of the Army National Guard to whom temporary Federal recognition has been extended is appointed as a Reserve for service as a member of the Army National Guard of the United States, his appointment shall bear the date of the temporary recognition and shall be considered to have been accepted and effective on that date.

(c) When the Army National Guard of the United States is ordered to active duty, any officer of the Army National Guard who is not a Reserve of the Army may be appointed by the President as a Reserve for service as a member of the Army National Guard of the United States in the grade that he holds in the Army National Guard.

(Aug. 10, 1956, § 3351, ch. 1041, 70A Stat. 193; transferred and redesignated § 12211 P.L. 103–337, § 1662(c)(3), Oct. 5, 1994, 108 Stat. 2990; amended P.L. 104–106, § 1501(b)(13)(A), Feb. 10, 1996, 110 Stat. 496.)

§ 12212. Officers: Air National Guard of the United States

(a) Upon being federally recognized, an officer of the Air National Guard shall be appointed as a Reserve for service as a member of the Air National Guard of the United States in the grade that he holds in the Air National Guard. However, an officer of the Air Force Reserve who is federally recognized as an officer of the Air National Guard becomes an officer of the Air National Guard of the United States and ceases to be an officer of the Air Force Reserve. The acceptance of an appointment as a Reserve for service

as a member of the Air National Guard of the United States by an officer of the Air National Guard does not vacate his office in the Air National Guard.

(b) When an officer of the Air National Guard to whom temporary Federal recognition has been extended is appointed as a Reserve for service as a member of the Air National Guard of the United States, his appointment shall bear the date of the temporary recognition and shall be considered to have been accepted and effective on that date.

(c) When the Air National Guard of the United States is ordered to active duty, any officer of the Air National Guard who is not a Reserve of the Air Force may be appointed by the President as a Reserve for service as a member of the Air National Guard of the United States in the grade that he holds in the Air National Guard.

(Aug. 10, 1956, § 8351, ch. 1041, 70A Stat. 519; transferred and redesignated § 12212 P.L. 103–337, § 1662(c)(3), Oct. 5, 1994, 108 Stat. 2990; amended P.L. 104–106, § 1501(b)(13)(A), Feb. 10, 1996, 110 Stat. 496.)

§ 12213. Officers; Army Reserve: transfer from Army National Guard of the United States

(a) Under such regulations as the Secretary of the Army may prescribe, and with the consent of the governor or other appropriate authority of the State concerned, an officer of the Army National Guard of the United States may be transferred in grade to the Army Reserve.

(b) Unless discharged from his appointment as a Reserve, an officer of the Army National Guard of the United States whose Federal recognition as a member of the Army National Guard is withdrawn becomes a member of the Army Reserve. An officer who so becomes a member of the Army Reserve ceases to be a member of the Army National Guard of the United States.

(Aug. 10, 1956, § 3352, ch. 1041, 70A Stat. 194; Sept. 2, 1958, P.L. 85–861, § 1(80)(A), 72 Stat. 1468; June 30, 1960, P.L. 86–559, § 1(7), 74 Stat. 265; Sept. 29, 1988, P.L. 100–456, § 1234(a), 102 Stat. 2059; transferred, redesignated § 12213, and amended P.L. 103–337, §§ 1636(a), 1662(c)(3), 1675(b)(2), Oct. 5, 1994, 108 Stat. 2968, 2990, 3017; P.L. 104–106, § 1501(b)(13)(A), (14), Feb. 10, 1996, 110 Stat. 496.)

§ 12214. Officers; Air Force Reserve: transfer from Air National Guard of the United States

(a) Under such regulations as the Secretary of the Air Force may prescribe, and with the consent of the governor or other appropriate authority of the State concerned, an officer of the Air National Guard of the United States may be transferred in grade to the Air Force Reserve.

(b) Unless discharged from his appointment as a Reserve, an officer of the Air National Guard of the United States whose Federal recognition as a member of the Air National Guard is withdrawn becomes a member of the Air Force Reserve. An officer who so becomes a member of the Air Force Reserve ceases to be a member of the Air National Guard of the United States.

(Aug. 10, 1956, § 8352, ch. 1041, 70A Stat. 520; Sept. 7, 1962, P.L. 87–651, § 126, 76 Stat. 514; Sept. 29, 1988, P.L. 100–456, § 1234(a), 102 Stat. 2059; transferred, redesignated § 12214, and amended P.L. 103–337, §§ 1662(c)(3), 1675(b)(2), Oct. 5, 1994, 108 Stat. 2990, 3017; P.L. 104–106, § 1501(b)(13)(A), Feb. 10, 1996, 110 Stat. 496.)

§ 12215. Commissioned officers: reserve grade of adjutants general and assistant adjutants general

(a) The adjutant general or an assistant adjutant general of the Army National Guard of a State may, upon being extended Federal recognition, be appointed as a reserve officer of the Army as of the date on which he is so recognized.

(b) The adjutant general or an assistant adjutant general of the Air National Guard of a State may be appointed in the reserve commissioned grade in which Federal recognition in the Air National Guard is extended to him.

(Added P.L. 103–337, § 1662(c)(1), Oct. 5, 1994, 108 Stat. 2990 [derived from §§ 3392, 8392].)

CHAPTER 1207—WARRANT OFFICERS

Sec.
12241. Warrant officers: grades; appointment, how made; term.
12242. Warrant officers: promotion.
12243. Warrant officers: suspension of laws for promotion or mandatory retirement or separation during war or emergency.

§ 12241. Warrant officers: grades; appointment, how made; term

(a) The permanent reserve warrant officer grades in each armed force are those prescribed for regular warrant officers by section 571(a) of this title.

(b) Appointments made in the permanent reserve grade of warrant officer, W–1, shall be made by warrant by the Secretary concerned. Appointments made in a permanent reserve grade of chief warrant officer shall be made by commission by the Secretary concerned.

(c) Appointments as Reserves in permanent warrant officer grades are for an indefinite term and are held during the pleasure of the Secretary concerned.

(Aug. 10, 1956, § 597, ch. 1041, 70A Stat. 26; Nov. 8, 1985, P.L. 99–145, § 531(b), 99 Stat. 633; Dec. 5, 1991, P.L. 102–190, § 1131(2), 105 Stat. 1505; transferred and redesignated § 12241 P.L. 103–337, § 1662(d)(2), Oct. 5, 1994, 108 Stat. 2991.)

§ 12242. Warrant officers: promotion

The promotion of permanent reserve warrant officers not on the warrant officer active-duty list to permanent reserve warrant officer grades shall be governed by such regulations as the Secretary concerned may prescribe.

(Aug. 10, 1956, § 598, ch. 1041, 70A Stat. 26; Dec. 5, 1991, P.L. 102–190, § 1131(3), 105 Stat. 1505; transferred and redesignated § 12242 P.L. 103–337, § 1662(d)(2), Oct. 5, 1994, 108 Stat. 2991.)

§ 12243. Warrant officers: suspension of laws for promotion or mandatory retirement or separation during war or emergency

In time of war, or of emergency declared after May 29, 1954, by Congress or the President, the President may suspend the operation of any provision of law relating to promotion, or mandatory retirement or separation, of permanent reserve warrant officers of any armed force.

(Aug. 10, 1956, § 599, ch. 1041, 70A Stat. 26; transferred and redesignated § 12243 P.L. 103–337, § 1662(d)(2), Oct. 5, 1994, 108 Stat. 2991.)

CHAPTER 1209—ACTIVE DUTY

Sec.
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§ 12301. Reserve components generally

(a) In time of war or of national emergency declared by Congress, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons affected, order any unit, and any member not assigned to a unit organized to serve as a unit, of a reserve component under the jurisdiction of that Secretary to active duty (other than for training) for the duration of the war or emergency and for six months thereafter. However a member on an inactive status list or in a retired status may not be ordered to active duty under this subsection unless the Secretary concerned, with the approval of the Secretary of Defense in the case of the Secretary of a military department, determines that there are not enough qualified Reserves in an active status or in the inactive National Guard in the required category who are readily available.

(b) At any time, an authority designated by the Secretary concerned may, without the consent of the persons affected, order any unit, and any member not assigned to a unit organized to serve as a unit, in an active status in a reserve component under the jurisdiction of that Secretary to active duty for not more than 15 days a year. However, units and members of the Army National Guard of the United States or the Air National Guard of the United States may not be ordered to active duty under this subsection

without the consent of the governor of the State (or, in the case of the District of Columbia National Guard, the commanding general of the District of Columbia National Guard).

(c) So far as practicable, during any expansion of the active armed forces that requires that units and members of the reserve components be ordered to active duty (other than for training), members of units organized and trained to serve as units who are ordered to that duty without their consent shall be so ordered with their units. However, members of those units may be reassigned after being ordered to active duty (other than for training).

(d) At any time, an authority designated by the Secretary concerned may order a member of a reserve component under his jurisdiction to active duty, or retain him on active duty, with the consent of that member. However, a member of the Army National Guard of the United States or the Air National Guard of the United States may not be ordered to active duty under this subsection without the consent of the governor or other appropriate authority of the State concerned.

(e) The period of time allowed between the date when a Reserve ordered to active duty (other than for training) is alerted for that duty and the date when the Reserve is required to enter upon that duty shall be determined by the Secretary concerned based upon military requirements at that time.

(f) The consent of a Governor described in subsections (b) and (d) may not be withheld (in whole or in part) with regard to active duty outside the United States, its territories, and its possessions, because of any objection to the location, purpose, type, or schedule of such active duty.

(g)(1) A member of a reserve component may be ordered to active duty without his consent if the Secretary concerned determines that the member is in a captive status. A member ordered to active duty under this section may not be retained on active duty, without his consent, for more than 30 days after his captive status is terminated.

(2) The Secretary of Defense shall prescribe regulations to carry out this section. Such regulations shall apply uniformly among the armed forces under the jurisdiction of the Secretary. A determination for the purposes of this subsection that a member is in a captive status shall be made pursuant to such regulations.

(3) In this section, the term "captive status" means the status of a member of the armed forces who is in a missing status (as defined in section 551(2) of title 37) which occurs as the result of a hostile action and is related to the member's military status.

(h)(1) When authorized by the Secretary of Defense, the Secretary of a military department may, with the consent of the member, order a member of a reserve component to active duty—

(A) to receive authorized medical care;

(B) to be medically evaluated for disability or other purposes; or

(C) to complete a required Department of Defense health care study, which may include an associated medical evaluation of the member.

(2) A member ordered to active duty under this subsection may, with the member's consent, be retained on active duty, if the

Secretary concerned considers it appropriate, for medical treatment for a condition associated with the study or evaluation, if that treatment of the member is otherwise authorized by law.

(3) A member of the Army National Guard of the United States or the Air National Guard of the United States may be ordered to active duty under this subsection only with the consent of the Governor or other appropriate authority of the State concerned.

(Aug. 10, 1956, § 672, ch. 1041, 70A Stat. 27; Sept. 2, 1958, P.L. 85–861, §§ 1(13), 33(a)(5), 72 Stat. 1440, 1564; Sept. 24, 1980, P.L. 96–357, § 6, 94 Stat. 1182; Dec. 23, 1980, P.L. 96–584, § 1, 94 Stat. 3377; amended identically P.L. 99–500, 99–591, 99–661, §§ 101(c) [§ 9122], 101(c), [§ 9122], § 522, Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–127, 3341–127, 3871; amended P.L. 99–661, § 524, Nov. 14, 1986, 100 Stat. 3871; P.L. 100–456, § 1234(a), Sept. 29, 1988, 102 Stat. 2059; transferred, redesignated § 12301, and amended P.L. 103–337, §§ 1662(e)(2), 1675(c)(1), Oct. 5, 1994, 108 Stat. 2992, 3017; P.L. 106–65, § 512, Oct. 5, 1999, 113 Stat. 592.)

§ 12302. Ready Reserve [1]

(a) In time of national emergency declared by the President after January 1, 1953, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons concerned, order any unit, and any member not assigned to a unit organized to serve as a unit, in the Ready Reserve under the jurisdiction of that Secretary to active duty (other than for training) for not more than 24 consecutive months.

(b) To achieve fair treatment as between members in the Ready Reserve who are being considered for recall to duty without their consent, consideration shall be given to—

(1) the length and nature of previous service, to assure such sharing of exposure to hazards as the national security and military requirements will reasonably allow;

(2) family responsibilities; and

(3) employment necessary to maintain the national health, safety, or interest.

The Secretary of Defense shall prescribe such policies and procedures as he considers necessary to carry out this subsection. He shall report on those policies and procedures at least once a year to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(c) Not more than 1,000,000 members of the Ready Reserve may be on active duty (other than for training), without their consent, under this section at any one time.

(d) Whenever one or more units of the Ready Reserve are ordered to active duty, the President shall, on the first day of the second fiscal year quarter immediately following the quarter in which the first unit or units are ordered to active duty and on the first day of each succeeding six-month period thereafter, so long as such unit is retained on active duty, submit a report to the Congress regarding the necessity for such unit or units being ordered to and retained on active duty. The President shall include in each such report a statement of the mission of each such unit ordered to active duty, an evaluation of such unit's performance of that mission, where each such unit is being deployed at the time of the report,

[1] By Executive Order 12743, dated Jan. 18, 1991, the authority under section 12302 [formerly 673] to order any unit, and any member not assigned to a unit, in the Ready Reserve to active duty (other than for training) for not more than 24 consecutive months, was invoked and made available to the Secretaries of the military departments, subject to the direction of the Secretary of Defense, and to the Secretary of Transportation with respect to the Coast Guard.

and such other information regarding each unit as the President deems appropriate.

(Aug. 10, 1956, § 673, ch. 1041, 70A Stat. 28; Sept. 2, 1958, P.L. 85–861, §§ 1(14), 33(a)(5), 72 Stat. 1441, 1564; Nov. 16, 1973, P.L. 93–155, § 303(a), 87 Stat. 607; transferred and redesignated § 12302 P.L. 103–337, § 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992; amended P.L. 104–106, § 1502(a)(2), Feb. 10, 1996, 110 Stat. 502; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 12303. Ready Reserve; members not assigned to, or participating satisfactorily in, units

(a) Notwithstanding any other provision of law, the President may order to active duty any member of the Ready Reserve of an armed force who—

(1) is not assigned to, or participating satisfactorily in, a unit of the Ready Reserve;

(2) has not fulfilled his statutory reserve obligation; and

(3) has not served on active duty for a total of 24 months.

(b) A member who is ordered to active duty under this section may be required to serve on active duty until his total service on active duty equals 24 months. If his enlistment or other period of military service would expire before he has served the required period under this section, it may be extended until he has served the required period.

(c) To achieve fair treatment among members of the Ready Reserve who are being considered for active duty under this section, appropriate consideration shall be given to—

(1) family responsibilities; and

(2) employment necessary to maintain the national health, safety, or interest.

(Added as § 673a P.L. 90–40, § 6(1), June 30, 1967, 81 Stat. 105; transferred and redesignated § 12303 P.L. 103–337, § 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.)

§ 12304. Selected Reserve and certain Individual Ready Reserve members; order to active duty other than during war or national emergency

(a) AUTHORITY.—Notwithstanding the provisions of section 12302(a) or any other provision of law, when the President determines that it is necessary to augment the active forces for any operational mission or that it is necessary to provide assistance referred to in subsection (b), he may authorize the Secretary of Defense and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, without the consent of the members concerned, to order any unit, and any member not assigned to a unit organized to serve as a unit of the Selected Reserve (as defined in section 10143(a) of this title), or any member in the Individual Ready Reserve mobilization category and designated as essential under regulations prescribed by the Secretary concerned, under their respective jurisdictions, to active duty (other than for training) for not more than 270 days.[2]

[2] Executive Order 12727 of Aug. 22, 1990, authorizes the Secretaries of Defense and Transportation to order to active duty units, and individual members not assigned to units, of the Selected Reserve under section 673b [now 12304]. By Executive Order 12733 of Nov. 3, 1990, the President determined that, in the interests of national security, extending the period of active duty [under the provisions of subsection (i), as in effect before the amendments made by section 511(a) of P.L. 103–337] is necessary for the following: units of the Selected Reserve, and members of the Selected Reserve not assigned to a unit organized to serve as a unit of the Selected Reserve, now serving on or hereafter ordered to active duty pursuant to section 673b(a) of title

(b) SUPPORT FOR RESPONSES TO CERTAIN EMERGENCIES.—The authority under subsection (a) includes authority to order a unit or member to active duty to provide assistance in responding to an emergency involving a use or threatened use of a weapon of mass destruction.

(c) LIMITATIONS.—(1) No unit or member of a reserve component may be ordered to active duty under this section to perform any of the functions authorized by chapter 15 or section 12406 of this title or, except as provided in subsection (b), to provide assistance to either the Federal Government or a State in time of a serious natural or manmade disaster, accident, or catastrophe.

(2) Not more than 200,000 members of the Selected Reserve and the Individual Ready Reserve may be on active duty under this section at any one time, of whom not more than 30,000 may be members of the Individual Ready Reserve.

(d) EXCLUSION FROM STRENGTH LIMITATIONS.—Members ordered to active duty under this section shall not be counted in computing authorized strength in members on active duty or members in grade under this title or any other law.

(e) POLICIES AND PROCEDURES.—The Secretary of Defense and the Secretary of Transportation shall prescribe such policies and procedures for the armed forces under their respective jurisdictions as they consider necessary to carry out this section.

(f) NOTIFICATION OF CONGRESS.—Whenever the President authorizes the Secretary of Defense or the Secretary of Transportation to order any unit or member of the Selected Reserve or Individual Ready Reserve to active duty, under the authority of subsection (a), he shall, within 24 hours after exercising such authority, submit to Congress a report, in writing, setting forth the circumstances necessitating the action taken under this section and describing the anticipated use of these units or members.

(g) TERMINATION OF DUTY.—Whenever any unit of the Selected Reserve or any member of the Selected Reserve not assigned to a unit organized to serve as a unit, or any member of the Individual Ready Reserve, is ordered to active duty under authority of subsection (a), the service of all units or members so ordered to active duty may be terminated by—

(1) order of the President, or

(2) law.

(h) RELATIONSHIP TO WAR POWERS RESOLUTION.—Nothing contained in this section shall be construed as amending or limiting the application of the provisions of the War Powers Resolution (50 U.S.C. 1541 et seq.).

(i) DEFINITIONS.—In this section:

(1) The term "Individual Ready Reserve mobilization category" means, in the case of any reserve component, the category of the Individual Ready Reserve described in section 10144(b) of this title.

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10 of the United States Code and Executive Order No. 12727 of August 22, 1990, and authorized the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when the latter is not operating as a service in the Department of the Navy, to extend the period of active duty of such units and members of the Selected Reserve.

Executive Order 12927 of Sept. 15, 1994, authorizes the Secretaries of Defense and Transportation to order to active duty units, and individual members not assigned to units, of the Selected Reserve under section 673b [now 12304].

(2) The term "weapon of mass destruction" has the meaning given that term in section 1403 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1)).

(Added as § 673b P.L. 94–286, § 1, May 14, 1976, 90 Stat. 517, and amended P.L. 96–584, § 2, Dec. 23, 1980, 94 Stat. 3377; P.L. 97–295, § 1(9), Oct. 12, 1982, 96 Stat. 1289; P.L. 99–661, § 521, Nov. 14, 1986, 100 Stat. 3870; amended, transferred, and redesignated § 12304 P.L. 103–337, §§ 511(a), 1662(e)(2), 1675(c)(2), Oct. 5, 1994, 108 Stat. 2752, 2992, 3017; P.L. 105–85, § 511(b)–(e)(1), Nov. 18, 1997, 111 Stat. 1728–1729; P.L. 105–261, § 511(a), Oct. 17, 1998, 112 Stat. 2005.)

§ 12305. Authority of President to suspend certain laws relating to promotion, retirement, and separation

(a) Notwithstanding any other provision of law, during any period members of a reserve component are serving on active duty pursuant to an order to active duty under authority of section 12301, 12302, or 12304 of this title, the President may suspend any provision of law relating to promotion, retirement, or separation applicable to any member of the armed forces who the President determines is essential to the national security of the United States.[3]

(b) A suspension made under the authority of subsection (a) shall terminate (1) upon release from active duty of members of the reserve component ordered to active duty under the authority of section 12301, 12302, or 12304 of this title, as the case may be, or (2) at such time as the President determines the circumstances which required the action of ordering members of the reserve component to active duty no longer exist, whichever is earlier.

(Added as § 673c P.L. 98–94, § 1021(a), Sept. 24, 1983, 97 Stat. 670; P.L. 98–525, § 1405(16), Oct. 19, 1984, 98 Stat. 2622; transferred, redesignated § 12305, and amended P.L. 103–337, §§ 1662(e)(2), 1675(c)(3), Oct. 5, 1994, 108 Stat. 2992, 3017.)

§ 12306. Standby Reserve

(a) Units and members in the Standby Reserve may be ordered to active duty (other than for training) only as provided in section 12301 of this title.

(b) In time of emergency—

(1) no unit in the Standby Reserve organized to serve as a unit or any member thereof may be ordered to active duty (other than for training), unless the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, determines that there are not enough of the required kinds of units in the Ready Reserve that are readily available; and

(2) no other member in the Standby Reserve may be ordered to active duty (other than for training) as an individual without his consent, unless the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, determines that there are not enough qualified members in the Ready Reserve in the required category who are readily available.

(Aug. 10, 1956, § 674, ch. 1041, 70A Stat. 29; Sept. 7, 1962, P.L. 87–651, § 130, 76 Stat. 514; transferred, redesignated § 12306, and amended P.L. 103–337, §§ 1662(e)(2), 1675(c)(4), Oct. 5, 1994, 108 Stat. 2992, 3017.)

[3] The authority of the President under section 673c [now 12305] was delegated to the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, by Executive Order 12728, of August 22, 1990 (55 F.R. 35029).

§ 12307. Retired Reserve

A member in the Retired Reserve may, if qualified, be ordered to active duty without his consent, but only as provided in section 688 or 12301(a) of this title. A member of the Retired Reserve (other than a member transferred to the Retired Reserve under section 12641(b) of this title) who is ordered to active duty or other appropriate duty in a retired status may be credited under chapter 1223 of this title with service performed pursuant to such order. A member in a retired status is not eligible for promotion (or for consideration for promotion) as a Reserve.

(Aug. 10, 1956, § 675, ch. 1041, 70A Stat. 29; Sept. 24, 1983, P.L. 98–94, § 1017(a), 97 Stat. 669; Nov. 29, 1989, P.L. 101–189, § 651(d), 103 Stat. 1461; transferred, redesignated § 12307, and amended P.L. 103–337, §§ 1662(e)(2), 1675(c)(5), Oct. 5, 1994, 108 Stat. 2992, 3017; P.L. 104–106, § 1501(b)(17), Feb. 10, 1996, 110 Stat. 497.)

§ 12308. Retention after becoming qualified for retired pay

Any person who has qualified for retired pay under chapter 1223 of this title may, with his consent and by order of the Secretary concerned, be retained on active duty, or in service in a reserve component other than that listed in section 12732(b) of this title. A member so retained shall be credited with that service for all purposes.

(Aug. 10, 1956, § 676, ch. 1041, 70A Stat. 29; transferred, redesignated § 12308, and amended P.L. 103–337, §§ 1662(e)(2), 1675(c)(6), Oct. 5, 1994, 108 Stat. 2992, 3017.)

§ 12309. Reserve officers: use of in expansion of armed forces

When an expansion of the active armed forces requires that officers of the reserve components who are not members of units organized to serve as such be ordered as individuals to active duty (other than for training) without their consent, the services of qualified and available reserve officers in all grades shall be used, so far as practicable, according to the needs of the branches, grades, or specialties concerned.

(Aug. 10, 1956, § 677, ch. 1041, 70A Stat. 29; transferred and redesignated § 12309 P.L. 103–337, § 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.)

§ 12310. Reserves: for organizing, administering, etc., reserve components

(a) GRADE WHEN ORDERED TO ACTIVE DUTY.—A Reserve ordered to active duty under section 12301(d) of this title in connection with organizing, administering, recruiting, instructing, or training the reserve components shall be ordered in his reserve grade. While so serving he continues to be eligible for promotion as a Reserve, if he is otherwise qualified.

(b) DUTIES.—A Reserve on active duty as described in subsection (a) may be assigned only duties in connection with the functions described in that subsection, which may include the following:

(1) Supporting operations or missions assigned in whole or in part to reserve components.

(2) Supporting operations or missions performed or to be performed by—

(A) a unit composed of elements from more than one component of the same armed force; or

(B) a joint forces unit that includes—

(i) one or more reserve component units; or

(ii) a member of a reserve component whose reserve component assignment is in a position in an element of the joint forces unit.

(3) Advising the Secretary of Defense, the Secretaries of the military departments, the Joint Chiefs of Staff, and the commanders of the unified combatant command regarding reserve component matters.

(c) DUTIES RELATING TO DEFENSE AGAINST WEAPONS OF MASS DESTRUCTION.—(1) Notwithstanding subsection (b), a Reserve on active duty as described in subsection (a), or a Reserve who is a member of the National Guard serving on full-time National Guard duty under section 502(f) of title 32 in connection with functions referred to in subsection (a), may, subject to paragraph (3), perform duties in support of emergency preparedness programs to prepare for or to respond to any emergency involving the use of a weapon of mass destruction (as defined in section 1403 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1))).

(2) The costs of the pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for a Reserve performing duties under the authority of paragraph (1) shall be paid from the appropriation that is available to pay such costs for other members of the reserve component of that Reserve who are performing duties as described in subsection (a).

(3) A Reserve may perform duties described in paragraph (1) only—

(A) while assigned to the Department of Defense Consequence Management Program Integration Office; or

(B) while assigned to a reserve component rapid assessment element team and performing those duties within the geographical limits of the United States, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.

(4) Reserves on active duty who are performing duties described in paragraph (1) shall be counted against the annual end strength authorizations required by section 115(a)(1)(B) and 115(a)(2) of this title. The justification material for the defense budget request for a fiscal year shall identify the number and component of the Reserves programmed to be performing duties described in paragraph (1) during that fiscal year.

(5) A reserve component rapid assessment element team, and any Reserve assigned to such a team, may not be used to respond to an emergency described in paragraph (1) unless the Secretary of Defense has certified to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives that that team, or that Reserve, possesses the requisite skills, training, and equipment to be proficient in all mission requirements.

(6) If the Secretary of Defense submits to Congress any request for the enactment of legislation to modify the requirements of paragraph (3), the Secretary shall provide with the request—

(A) justification for each such requested modification; and

(B) the Secretary's plan for sustaining the qualifications of the personnel and teams described in paragraph (3)(B).

(d) TRAINING.—A Reserve on active duty as described in subsection (a) may be provided training consistent with training provided to other members on active duty, as the Secretary concerned sees fit.

(Aug. 10, 1956, § 678, ch. 1041, 70A Stat. 30; transferred, redesignated § 12310, and amended P.L. 103–337, §§ 1662(e)(2), 1675(c)(7), Oct. 5, 1994, 108 Stat. 2992, 3017; P.L. 104–201, § 541, Sept. 23, 1996, 110 Stat. 2521; P.L. 105–261, § 511(b), Oct. 17, 1998, 112 Stat. 2006; P.L. 106–65, §§ 555(a), (b), 556, 1067(1), Oct. 5, 1999, 113 Stat. 617, 618, 618, 774.)

§ 12311. Active duty agreements

(a) To provide definite terms of active duty (other than for training) for Reserves with their consent, the Secretary concerned may make a standard written agreement with any member of a reserve component under his jurisdiction requiring the member to serve for a period of active duty (other than for training) of not more than five years. When such an agreement expires, a new one may be made. This subsection does not apply in time of war declared by Congress.

(b) An agreement may not be made under subsection (a) unless the specified period of duty is at least 12 months longer than any period of active duty that the member is otherwise required to perform.

(c) Agreements made under subsection (a) shall be uniform so far as practicable, and are subject to such standards and policies as may be prescribed by the Secretary of Defense for the armed forces under his jurisdiction or by the Secretary of Transportation for the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(d) If an agreement made under subsection (a) expires during a war or during a national emergency declared by Congress or the President after January 1, 1953, the Reserve concerned may be kept on active duty, without his consent, as otherwise prescribed by law.

(Aug. 10, 1956, § 679, ch. 1041, 70A Stat. 30; Dec. 12, 1980, P.L. 96–513, § 511(19), 94 Stat. 2921; transferred and redesignated § 12311, P.L. 103–337, § 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.)

§ 12312. Active duty agreements: release from duty

(a) Each agreement made under section 12311(a) of this title shall provide that the member may not be released from active duty without his consent during the period of the agreement—

(1) because of a reduction in the actual personnel strength of the armed force concerned, unless the release is in accordance with the recommendation of a board of officers appointed by an authority designated by the Secretary concerned to determine the members to be released from active duty under regulations prescribed by the Secretary; or

(2) for any other reason, without an opportunity to be heard by a board of officers before the release, unless he is (A) dismissed or discharged under the sentence of a court-martial, (B) released because of an unexplained absence without leave for at least three months, (C) released because he is convicted and sentenced to confinement in a Federal or State peniten-

tiary or correctional institution and the sentence has become final, or (D) released because he has been considered at least twice and has not been recommended for promotion to the next higher grade or because he is considered as having failed of selection for promotion to the next higher grade and has not been recommended for promotion to that grade, under conditions that would require the release or separation of a reserve officer who is not serving under such an agreement.

(b) A member who is released from active duty without his consent before the end of his agreement made under section 12311(a) of this title is entitled to an amount computed by multiplying the number of years and fractions of a year of his unexpired period of service under the agreement by the sum of one month's basic pay, special pay, and allowances to which he is entitled on the day of his release. The amount to which a member is entitled under this subsection is in addition to any pay and allowances to which he is otherwise entitled. For the purposes of this subsection, a fraction of a month of 15 days or more is counted as a whole month, and a fraction of a month of less than 15 days is disregarded. This subsection does not apply to a member if he is—

(1) released for a reason described in subsection (a)(2)(A)–(C);

(2) released because of a physical disability resulting from his intentional misconduct or wilful neglect;

(3) eligible for retired pay, separation pay, or severance pay under another provision of law;

(4) placed on a temporary disability retired list; or

(5) released to accept an appointment, or to be enlisted, in a regular component of an armed force.

(Aug. 10, 1956, § 680, ch. 1041, 70A Stat. 30; June 28, 1962, P.L. 87–509, § 2, 76 Stat. 121; Oct. 19, 1984, P.L. 98–525, § 533(b), § 1405(17), 98 Stat. 2528, 2622; transferred, redesignated § 12312, and amended P.L. 103–337, §§ 1662(e)(2), 1675(c)(8), Oct. 5, 1994, 108 Stat. 2992, 3017.)

§ 12313. Reserves: release from active duty

(a) Except as otherwise provided in this title, the Secretary concerned may at any time release a Reserve under his jurisdiction from active duty.

(b) In time of war or of national emergency declared by Congress or the President after January 1, 1953, a member of a reserve component may be released from active duty (other than for training) only if—

(1) a board of officers convened at his request by an authority designated by the Secretary concerned recommends the release and the recommendation is approved;

(2) the member does not request that a board be convened; or

(3) his release is otherwise authorized by law.

This subsection does not apply to an armed force during a period of demobilization or reduction in strength of that armed force.

(Aug. 10, 1956, § 681, ch. 1041, 70A Stat. 31; transferred and redesignated § 12313 P.L. 103–337, § 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.)

§ 12314. Reserves: kinds of duty

Notwithstanding any other provision of law, a member of a reserve component who is on active duty other than for training may,

under regulations prescribed by the Secretary concerned, be detailed or assigned to any duty authorized by law for members of the regular component of the armed force concerned.

(Aug. 10, 1956, § 682, ch. 1041, 70A Stat. 31; transferred and redesignated § 12314 P.L. 103–337, § 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.)

§ 12315. Reserves: duty with or without pay

(a) Subject to other provisions of this title, any Reserve may be ordered to active duty or other duty—

(1) with the pay and allowances provided by law; or

(2) with his consent, without pay.

Duty without pay shall be considered for all purposes as if it were duty with pay.

(b) A Reserve who is kept on active duty after his term of service expires is entitled to pay and allowances while on that duty, except as they may be forfeited under the approved sentence of a court-martial or by non-judicial punishment by a commanding officer or when he is otherwise in a non-pay status.

(Aug. 10, 1956, § 683, ch. 1041, 70A Stat. 31; transferred and redesignated § 12315 P.L. 103–337, § 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.)

§ 12316. Payment of certain Reserves while on duty

(a) Except as provided by subsection (b), a Reserve of the Army, Navy, Air Force, Marine Corps, or Coast Guard who because of his earlier military service is entitled to a pension, retired or retainer pay, or disability compensation, and who performs duty for which he is entitled to compensation, may elect to receive for that duty either—

(1) the payments to which he is entitled because of his earlier military service; or

(2) if he specifically waives those payments, the pay and allowances authorized by law for the duty that he is performing.

(b) Unless the payments because of his earlier military service are greater than the compensation prescribed by subsection (a)(2), a Reserve of the Army, Navy, Air Force, Marine Corps, or Coast Guard who because of his earlier military service is entitled to a pension, retired or retainer pay, or disability compensation, and who upon being ordered to active duty for a period of more than 30 days in time of war or national emergency is found physically qualified to perform that duty, ceases to be entitled to the payments because of his earlier military service until the period of active duty ends. While on that active duty, he is entitled to the compensation prescribed by subsection (a)(2). Other rights and benefits of the member or his dependents are unaffected by this subsection.

(Added as § 684 P.L. 85–861, § 1(15), Sept. 2, 1958, 72 Stat. 1441, and amended P.L. 93–586, § 1, Jan. 2, 1975, 88 Stat. 1920; transferred and redesignated § 12316 P.L. 103–337, § 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.)

§ 12317. Reserves: theological students; limitations

A Reserve may not be required to serve on active duty, or to participate in inactive duty training, while preparing for the ministry in a recognized theological or divinity school.

(Added as § 685 P.L. 85–861, § 1(15), Sept. 2, 1958, 72 Stat. 1441; transferred and redesignated § 12317 P.L. 103–337, § 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.)

§ 12318. Reserves on active duty: duties; funding

(a) During a period that members of a reserve component are serving on active duty pursuant to an order under section 12302 or 12304 of this title, members of reserve components serving on active duty may perform duties in connection with either such section.

(b) Funds available for the pay and allowances of Reserves referred to section 12310 of this title shall be available for the pay and allowances of such Reserves who perform duties in connection with section 12302 or 12304 of this title under the authority of subsection (a).

(Added as § 686 P.L. 99–661, § 412(b), Nov. 14, 1986, 100 Stat. 3861; transferred, redesignated § 12318, and amended P.L. 103–337, § 1662(e)(2), 1675(c)(9), Oct. 5, 1994, 108 Stat. 2992, 3017–3018.)

§ 12319. Ready Reserve: muster duty

(a) Under regulations prescribed by the Secretary of Defense, a member of the Ready Reserve may be ordered without his consent to muster duty one time each year. A member ordered to muster duty under this section shall be required to perform a minimum of two hours of muster duty on the day of muster.

(b) The period which a member may be required to devote to muster duty under this section, including round-trip travel to and from the location of that duty, may not total more than one day each calendar year.

(c) Except as specified in subsection (d), muster duty (and travel directly to and from that duty) under this section shall be treated as the equivalent of inactive-duty training (and travel directly to and from that training) for the purposes of this title and the provisions of title 37 (other than section 206(a)) and title 38, including provisions relating to the determination of eligibility for and the receipt of benefits and entitlements provided under those titles for Reserves performing inactive-duty training and for their dependents and survivors.

(d) Muster duty under this section shall not be credited in determining entitlement to, or in computing, retired pay under chapter 1223 of this title.

(Added as § 687 P.L. 101–189, § 502(a)(1), Nov. 29, 1989, 103 Stat. 1436; transferred, redesignated § 12319, and amended P.L. 103–337, §§ 1662(e)(2), 1675(c)(10), Oct. 5, 1994, 108 Stat. 2992, 3018.)

§ 12320. Reserve officers: grade in which ordered to active duty

A reserve officer who is ordered to active duty or full-time National Guard duty shall be ordered to active duty or full-time National Guard duty in his reserve grade, except that a reserve officer who is credited with service under section 12207 of this title and is ordered to active duty and placed on the active-duty list may be ordered to active duty in a reserve grade and with a date of rank and position on the active-duty list determined under regulations prescribed by the Secretary of Defense based upon the amount of service credited.

(Added as § 689 P.L. 96–513, § 106, Dec. 12, 1980, 94 Stat. 2868, and amended P.L. 97–22, § 4(g), July 10, 1981, 95 Stat. 127; amended, transferred, and redesignated § 12320 P.L. 103–337, §§ 1625, 1662(e)(2), 1675(c)(11), Oct. 5, 1994, 108 Stat. 2962, 2992, 3018.)

§ 12321. Reserve Officer Training Corps units: limitation on number of Reserves assigned

The number of members of the reserve components serving on active duty or full-time National Guard duty for the purpose of organizing, administering, recruiting, instructing, or training the reserve components who are assigned to duty with a unit of the Reserve Officer Training Corps program may not exceed 275.[4]

(Added as § 687 P.L. 101–510, § 559(a)(1), Nov. 5, 1990, 104 Stat. 1571; transferred and redesignated § 690 P.L. 102–25, § 704(a)(3), April 6, 1991, 105 Stat. 118; amended P.L. 102–190, § 1061(a)(4)(A), Dec. 5, 1991, 105 Stat. 1472; P.L. 102–484, § 512, Oct. 23, 1992, 106 Stat. 2405; P.L. 103–160, § 512, Nov. 30, 1993, 107 Stat. 1649; transferred and redesignated § 12321 P.L. 103–337, § 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.)

§ 12322. Active duty for health care

A member of a uniformed service described in paragraph (1)(B) or (2)(B) of section 1074a(a) of this title may be ordered to active duty, and a member of a uniformed service described in paragraph (1)(A) or (2)(A) of such section may be continued on active duty, for a period of more than 30 days while the member is being treated for (or recovering from) an injury, illness, or disease incurred or aggravated in the line of duty as described in any of such paragraphs.

(Added P.L. 106–65, § 705(a)(1), Oct. 5, 1999, 113 Stat. 683.)

[4] Section 525 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (P.L. 102–190; 105 Stat. 1363) provides:

The Secretary of the military department concerned may waive the prohibition in section 12321 of title 10, United States Code, in the case of a member of a reserve component of the Armed Forces referred to in that section who is serving in an assignment to duty with a unit of the Reserve Officer Training Corps program on September 30, 1991, if the Secretary determines that the removal of the member from that assignment will cause a financial hardship for that member.

CHAPTER 1211—NATIONAL GUARD MEMBERS IN FEDERAL SERVICE

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12402. Army and Air National Guard of the United States: commissioned officers; duty in National Guard Bureau.
12403. Army and Air National Guard of the United States: members; status in which ordered into Federal service.
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12406. National Guard in Federal service: call.
12407. National Guard in Federal service: period of service; apportionment.
12408. National Guard in Federal service: physical examination.

§ 12401. Army and Air National Guard of the United States: status

Members of the Army National Guard of the United States and the Air National Guard of the United States are not in active Federal service except when ordered thereto under law.

(Added P.L. 103–337, § 1662(f)(1), Oct. 5, 1994, 108 Stat. 2993 [derived from §§ 3495, 8495].)

§ 12402. Army and Air National Guard of the United States: commissioned officers; duty in National Guard Bureau

(a) The President may, with their consent, order commissioned officers of the Army National Guard of the United States and the Air National Guard of the United States to active duty in the National Guard Bureau.

(b)(1) The number of officers of the Army National Guard of the United States in grades below brigadier general who are ordered to active duty in the National Guard Bureau may not be more than 40 percent of the number of officers of the Army authorized for duty in that Bureau and, to the extent practicable, shall not exceed 40 percent of the number of officers of the Army serving in that Bureau in any grade below brigadier general.

(2) The number of officers of the Air National Guard of the United States in grades below brigadier general who are ordered to active duty in the National Guard Bureau may not be more than 40 percent of the number of officers of the Air Force authorized for duty in that Bureau and, to the extent practicable, shall not exceed 40 percent of the number of officers of the Air Force serving in that Bureau in any grade below brigadier general.

(Added P.L. 103–337, § 1662(f)(1), Oct. 5, 1994, 108 Stat. 2993 [derived from §§ 3496, 8496]; amended P.L. 104–106, § 1501(b)(18)(B), Feb. 10, 1996, 110 Stat. 497.)

§ 12403. Army and Air National Guard of the United States: members; status in which ordered into Federal service

Members of the Army National Guard of the United States ordered to active duty shall be ordered to duty as Reserves of the Army. Members of the Air National Guard of the United States ordered to active duty shall be ordered to duty as Reserves of the Air Force.

(Added P.L. 103–337, § 1662(f)(1), Oct. 5, 1994, 108 Stat. 2993 [derived from §§ 3497, 8497]; amended P.L. 104–106, § 1501(b)(18)(B), Feb. 10, 1996, 110 Stat. 497.)

§ 12404. Army and Air National Guard of the United States: mobilization; maintenance of organization

During an initial mobilization, the organization of a unit of the Army National Guard of the United States or of the Air National Guard of the United States ordered into active Federal service shall, so far as practicable, be maintained as it existed on the date of the order to duty.

(Added P.L. 103–337, § 1662(f)(1), Oct. 5, 1994, 108 Stat. 2993 [derived from §§ 3498, 8498]; amended P.L. 104–106, § 1501(b)(18)(B), Feb. 10, 1996, 110 Stat. 497.)

§ 12405. National Guard in Federal service: status

Members of the National Guard called into Federal service are, from the time when they are required to respond to the call, subject to the laws and regulations governing the Army or the Air Force, as the case may be, except those applicable only to members of the Regular Army or Regular Air Force, as the case may be.

(Added P.L. 103–337, § 1662(f)(1), Oct. 5, 1994, 108 Stat. 2993 [derived from §§ 3499, 8499].)

§ 12406. National Guard in Federal service: call

Whenever—

(1) the United States, or any of the Territories, Commonwealths, or possessions, is invaded or is in danger of invasion by a foreign nation;

(2) there is a rebellion or danger of a rebellion against the authority of the Government of the United States; or

(3) the President is unable with the regular forces to execute the laws of the United States;

the President may call into Federal service members and units of the National Guard of any State in such numbers as he considers necessary to repel the invasion, suppress the rebellion, or execute those laws. Orders for these purposes shall be issued through the governors of the States or, in the case of the District of Columbia, through the commanding general of the National Guard of the District of Columbia.

(Added P.L. 103–337, § 1662(f)(1), Oct. 5, 1994, 108 Stat. 2994 [derived from §§ 3500, 8500].)

§ 12407. National Guard in Federal service: period of service; apportionment

(a) Whenever the President calls the National Guard of a State into Federal service, he may specify in the call the period of the service. Members and units called shall serve inside or outside the territory of the United States during the term specified, unless sooner relieved by the President. However, no member of the Na-

tional Guard may be kept in Federal service beyond the term of his commission or enlistment.

(b) When the National Guard of a State is called into Federal service with the National Guard of another State, the President may apportion the total number called from the Army National Guard or from the Air National Guard, as the case may be, on the basis of the populations of the States affected by the call.

(Added P.L. 103–337, § 1662(f)(1), Oct. 5, 1994, 108 Stat. 2994 [derived from §§ 3501, 8501]; amended P.L. 104–106, § 1501(b)(19), Feb. 10, 1996, 110 Stat. 497.)

§ 12408. National Guard in Federal service: physical examination

(a) Under regulations prescribed by the President, each member of the National Guard called into Federal service under section 12301(a), 12302, or 12304 of this title shall be examined as to physical fitness, without further commission or enlistment.

(b) Immediately before such a member is mustered out of Federal service, he shall be examined as to physical fitness. The record of this examination shall be retained by the United States.

(Added P.L. 103–337, § 1662(f)(1), Oct. 5, 1994, 108 Stat. 2994 [derived from §§ 3502, 8502]; amended P.L. 104–201, § 523, Sept. 23, 1996, 110 Stat. 2517.)

CHAPTER 1213—SPECIAL APPOINTMENTS, ASSIGNMENTS, DETAILS, AND DUTIES

Sec.
12501. Reserve components: detail of members of regular and reserve components to assist.
12502. Chief and assistant chief of staff of National Guard divisions and wings in Federal service: detail.
12503. Ready Reserve: funeral honors duty.
[12505. Repealed.]

§ 12501. Reserve components: detail of members of regular and reserve components to assist

The Secretary concerned shall detail such members of the regular and reserve components under his jurisdiction as are necessary to effectively develop, train, instruct, and administer those reserve components.

(Added P.L. 103–337, § 1662(g)(1), Oct. 5, 1994, 108 Stat. 2995 [derived from § 715].)

§ 12502. Chief and assistant chief of staff of National Guard divisions and wings in Federal service: detail

(a) The President may detail a regular or reserve officer of the Army as chief of staff, and a regular or reserve officer or an officer of the Army National Guard as assistant to the chief of staff, of any division of the Army National Guard that is in Federal service as an Army National Guard organization.

(b) The President may detail a regular or reserve officer of the Air Force as chief of staff, and a regular or reserve officer or an officer of the Air National Guard as assistant to the chief of staff, of any wing of the Air National Guard that is in Federal service as an Air National Guard organization.

(Added P.L. 103–337, § 1662(g)(1), Oct. 5, 1994, 108 Stat. 2995 [derived from §§ 3542, 8542].)

§ 12503. Ready Reserve: funeral honors duty

(a) ORDER TO DUTY.—A member of the Ready Reserve may be ordered to funeral honors duty, with the consent of the member, in preparation for or to perform funeral honors functions at the funeral of a veteran as defined in section 1491 of this title.

(b) SERVICE CREDIT.—A member ordered to funeral honors duty under this section shall be required to perform a minimum of two hours of such duty in order to receive—

(1) service credit under section 12732(a)(2)(E) of this title; and

(2) as directed by the Secretary concerned, either—

(A) the allowance under section 435 of title 37; or

(B) compensation under section 206 of title 37.

(c) REIMBURSABLE EXPENSES.—A member who performs funeral honors duty under this section may be reimbursed for travel and transportation expenses incurred in conjunction with such duty

as authorized under chapter 7 of title 37 if such duty is performed at a location 50 miles or more from the member's residence.

(d) REGULATIONS.—The exercise of authority under subsection (a) is subject to regulations prescribed by the Secretary of Defense.

(e) MEMBERS OF THE NATIONAL GUARD.—This section does not apply to members of the Army National Guard of the United States or the Air National Guard of the United States. The performance of funeral honors duty by those members is provided for in section 115 of title 32.

(Added P.L. 106–65, § 578(g)(3), Oct. 5, 1999, 113 Stat. 628; amended P.L. 106–398, § 1[575(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–138.)

[§ 12505. Repealed. P.L. 106–398, § 1[507(f)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–105]

CHAPTER 1214—READY RESERVE MOBILIZATION INCOME INSURANCE

Sec.
12521. Definitions.
12522. Establishment of insurance program.
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§ 12521. Definitions

In this chapter:

(1) The term "insurance program" means the Ready Reserve Mobilization Income Insurance Program established under section 12522 of this title.

(2) The term "covered service" means active duty performed by a member of a reserve component under an order to active duty for a period of more than 30 days which specifies that the member's service—

(A) is in support of an operational mission for which members of the reserve components have been ordered to active duty without their consent; or

(B) is in support of forces activated during a period of war declared by Congress or a period of national emergency declared by the President or Congress.

(3) The term "insured member" means a member of the Ready Reserve who is enrolled for coverage under the insurance program in accordance with section 12524 of this title.

(4) The term "Secretary" means the Secretary of Defense.

(5) The term "Department" means the Department of Defense.

(6) The term "Board of Actuaries" means the Department of Defense Education Benefits Board of Actuaries referred to in section 2006(e)(1) of this title.

(7) The term "Fund" means the Reserve Mobilization Income Insurance Fund established by section 12528(a) of this title.

(Added P.L. 104–106, § 512(a)(1), Feb. 10, 1996, 110 Stat. 299.)

§ 12522. Establishment of insurance program

(a) ESTABLISHMENT.—The Secretary shall establish for members of the Ready Reserve (including the Coast Guard Reserve) an

insurance program to be known as the "Ready Reserve Mobilization Income Insurance Program".

(b) ADMINISTRATION.—The insurance program shall be administered by the Secretary. The Secretary may prescribe in regulations such rules, procedures, and policies as the Secretary considers necessary or appropriate to carry out the insurance program.

(c) AGREEMENT WITH SECRETARY OF TRANSPORTATION.—The Secretary and the Secretary of Transportation shall enter into an agreement with respect to the administration of the insurance program for the Coast Guard Reserve.

(Added P.L. 104–106, § 512(a)(1), Feb. 10, 1996, 110 Stat. 299.)

§ 12523. Risk insured

(a) IN GENERAL.—The insurance program shall insure members of the Ready Reserve against the risk of being ordered into covered service.

(b) ENTITLEMENT TO BENEFITS.—(1) An insured member ordered into covered service shall be entitled to payment of a benefit for each month (and fraction thereof) of covered service that exceeds 30 days of covered service, except that no member may be paid under the insurance program for more than 12 months of covered service served during any period of 18 consecutive months.

(2) Payment shall be based solely on the insured status of a member and on the period of covered service served by the member. Proof of loss of income or of expenses incurred as a result of covered service may not be required.

(Added P.L. 104–106, § 512(a)(1), Feb. 10, 1996, 110 Stat. 300.)

§ 12524. Enrollment and election of benefits

(a) ENROLLMENT.—(1) Except as provided in subsection (f), upon first becoming a member of the Ready Reserve, a member shall be automatically enrolled for coverage under the insurance program. An automatic enrollment of a member shall be void if within 60 days after first becoming a member of the Ready Reserve the member declines insurance under the program in accordance with the regulations prescribed by the Secretary.

(2) Promptly after the insurance program is established, the Secretary shall offer to members of the reserve components who are then members of the Ready Reserve (other than members ineligible under subsection (f)) an opportunity to enroll for coverage under the insurance program. A member who fails to enroll within 60 days after being offered the opportunity shall be considered as having declined to be insured under the program.

(3) A member of the Ready Reserve ineligible to enroll under subsection (f) shall be afforded an opportunity to enroll upon being released from active duty in accordance with regulations prescribed by the Secretary if the member has not previously had the opportunity to be enrolled under paragraph (1) or (2). A member who fails to enroll within 60 days after being afforded that opportunity shall be considered as having declined to be insured under the program.

(b) ELECTION OF BENEFIT AMOUNT.—The amount of a member's monthly benefit under an enrollment shall be the basic benefit under subsection (a) of section 12525 of this title unless the

member elects a different benefit under subsection (b) of such section within 60 days after first becoming a member of the Ready Reserve or within 60 days after being offered the opportunity to enroll, as the case may be.

(c) ELECTIONS IRREVOCABLE.—(1) An election to decline insurance pursuant to paragraph (1) or (2) of subsection (a) is irrevocable.

(2) The amount of coverage may not be increased after enrollment.

(d) ELECTION TO TERMINATE.—A member may terminate an enrollment at any time.

(e) INFORMATION TO BE FURNISHED.—The Secretary shall ensure that members referred to in subsection (a) are given a written explanation of the insurance program and are advised that they have the right to decline to be insured and, if not declined, to elect coverage for a reduced benefit or an enhanced benefit under subsection (b).

(f) MEMBERS INELIGIBLE TO ENROLL.—Members of the Ready Reserve serving on active duty (or full-time National Guard duty) are not eligible to enroll for coverage under the insurance program. The Secretary may define any additional category of members of the Ready Reserve to be excluded from eligibility to purchase insurance under this chapter.

(g) MEMBERS OF INDIVIDUAL READY RESERVE.—Notwithstanding any other provision of this section, and pursuant to regulations issued by the Secretary, a member of the Individual Ready Reserve who becomes a member of the Selected Reserve shall not be denied eligibility to purchase insurance under this chapter upon becoming a member of the Selected Reserve unless the member previously declined to enroll in the program of insurance under this chapter while a member of the Selected Reserve.

(Added P.L. 104–106, § 512(a)(1), Feb. 10, 1996, 110 Stat. 300; amended P.L. 104–201, § 542, Sept. 23, 1996, 110 Stat. 2521.)

§ 12525. Benefit amounts

(a) BASIC BENEFIT.—The basic benefit for an insured member under the insurance program is $1,000 per month (as adjusted under subsection (d)).

(b) REDUCED AND ENHANCED BENEFITS.—Under the regulations prescribed by the Secretary, a person enrolled for coverage under the insurance program may elect—

(1) a reduced coverage benefit equal to one-half the amount of the basic benefit; or

(2) an enhanced benefit in the amount of $1,500, $2,000, $2,500, $3,000, $3,500, $4,000, $4,500, or $5,000 per month (as adjusted under subsection (d)).

(c) AMOUNT FOR PARTIAL MONTH.—The amount of insurance payable to an insured member for any period of covered service that is less than one month shall be determined by multiplying 1/30 of the monthly benefit rate for the member by the number of days of the covered service served by the member during such period.

(d) ADJUSTMENT OF AMOUNTS.—(1) The Secretary shall determine annually the effect of inflation on benefits and shall adjust

the amounts set forth in subsections (a) and (b)(2) to maintain the constant dollar value of the benefit.

(2) If the amount of a benefit as adjusted under paragraph (1) is not evenly divisible by $10, the amount shall be rounded to the nearest multiple of $10, except that an amount evenly divisible by $5 but not by $10 shall be rounded to the next lower amount that is evenly divisible by $10.

(Added P.L. 104–106, § 512(a)(1), Feb. 10, 1996, 110 Stat. 301.)

§ 12526. Premiums

(a) ESTABLISHMENT OF RATES.—(1) The Secretary, in consultation with the Board of Actuaries, shall prescribe the premium rates for insurance under the insurance program.

(2) The Secretary shall prescribe a fixed premium rate for each $1,000 of monthly insurance benefit. The premium amount shall be equal to the share of the cost attributable to insuring the member and shall be the same for all members of the Ready Reserve who are insured under the insurance program for the same benefit amount. The Secretary shall prescribe the rate on the basis of the best available estimate of risk and financial exposure, levels of subscription by members, and other relevant factors.

(b) LEVEL PREMIUMS.—The premium rate prescribed for the first year of insurance coverage of an insured member shall be continued without change for subsequent years of insurance coverage, except that the Secretary, after consultation with the Board of Actuaries, may adjust the premium rate in order to fund inflation-adjusted benefit increases on an actuarially sound basis.

(Added P.L. 104–106, § 512(a)(1), Feb. 10, 1996, 110 Stat. 301.)

§ 12527. Payment of premiums

(a) METHODS OF PAYMENT.—(1) The monthly premium for coverage of a member of the Selected Reserve under the insurance program shall be deducted and withheld from the insured member's pay for each month.

(2) The Secretary of Defense, in consultation with the Secretary of Transportation, shall prescribe regulations which specify the procedures for payment of premiums by members of the Individual Ready Reserve and other members who do not receive pay on a monthly basis.

(b) ADVANCE PAY FOR PREMIUM.—The Secretary concerned may advance to an insured member the amount equal to the first insurance premium payment due under this chapter. The advance may be paid out of appropriations for military pay. An advance to a member shall be collected from the member either by deducting and withholding the amount from basic pay payable for the member or by collecting it from the member directly. No disbursing or certifying officer shall be responsible for any loss resulting from an advance under this subsection.

(c) PREMIUMS TO BE DEPOSITED IN FUND.—Premium amounts deducted and withheld from the pay of insured members and premium amounts paid directly to the Secretary shall be credited monthly to the Fund.

(Added P.L. 104–106, § 512(a)(1), Feb. 10, 1996, 110 Stat. 302; amended P.L. 104–201, § 547, Sept. 23, 1996, 110 Stat. 2524.)

§ 12528. Reserve Mobilization Income Insurance Fund

(a) ESTABLISHMENT.—There is established on the books of the Treasury a fund to be known as the "Reserve Mobilization Income Insurance Fund", which shall be administered by the Secretary of the Treasury. The Fund shall be used for the accumulation of funds in order to finance the liabilities of the insurance program on an actuarially sound basis.

(b) ASSETS OF FUND.—There shall be deposited into the Fund the following:

(1) Premiums paid under section 12527 of this title.

(2) Any amount appropriated to the Fund.

(3) Any return on investment of the assets of the Fund.

(c) AVAILABILITY.—Amounts in the Fund shall be available for paying insurance benefits under the insurance program.

(d) INVESTMENT OF ASSETS OF FUND.—The Secretary of the Treasury shall invest such portion of the Fund as is not in the judgment of the Secretary of Defense required to meet current liabilities. Such investments shall be in public debt securities with maturities suitable to the needs of the Fund, as determined by the Secretary of Defense, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to the Fund.

(e) ANNUAL ACCOUNTING.—At the beginning of each fiscal year, the Secretary, in consultation with the Board of Actuaries and the Secretary of the Treasury, shall determine the following:

(1) The projected amount of the premiums to be collected, investment earnings to be received, and any transfers or appropriations to be made for the Fund for that fiscal year.

(2) The amount for that fiscal year of any cumulative unfunded liability (including any negative amount or any gain to the Fund) resulting from payments of benefits.

(3) The amount for that fiscal year (including any negative amount) of any cumulative actuarial gain or loss to the Fund.

(Added P.L. 104–106, § 512(a)(1), Feb. 10, 1996, 110 Stat. 302.)

§ 12529. Board of Actuaries

(a) ACTUARIAL RESPONSIBILITY.—The Board of Actuaries shall have the actuarial responsibility for the insurance program.

(b) VALUATIONS AND PREMIUM RECOMMENDATIONS.—The Board of Actuaries shall carry out periodic actuarial valuations of the benefits under the insurance program and determine a premium rate methodology for the Secretary to use in setting premium rates for the insurance program. The Board shall conduct the first valuation and determine a premium rate methodology not later than six months after the insurance program is established.

(c) EFFECTS OF CHANGED BENEFITS.—If at the time of any actuarial valuation under subsection (b) there has been a change in benefits under the insurance program that has been made since the last such valuation and such change in benefits increases or decreases the present value of amounts payable from the Fund, the Board of Actuaries shall determine a premium rate methodology,

and recommend to the Secretary a premium schedule, for the liquidation of any liability (or actuarial gain to the Fund) resulting from such change and any previous such changes so that the present value of the sum of the scheduled premium payments (or reduction in payments that would otherwise be made) equals the cumulative increase (or decrease) in the present value of such benefits.

(d) ACTUARIAL GAINS OR LOSSES.—If at the time of any such valuation the Board of Actuaries determines that there has been an actuarial gain or loss to the Fund as a result of changes in actuarial assumptions since the last valuation or as a result of any differences, between actual and expected experience since the last valuation, the Board shall recommend to the Secretary a premium rate schedule for the amortization of the cumulative gain or loss to the Fund resulting from such changes in assumptions and any previous such changes in assumptions or from the differences in actual and expected experience, respectively, through an increase or decrease in the payments that would otherwise be made to the Fund.

(e) INSUFFICIENT ASSETS.—If at any time liabilities of the Fund exceed assets of the Fund as a result of members of the Ready Reserve being ordered to active duty as described in section 12521(2) of this title, and funds are unavailable to pay benefits completely, the Secretary shall request the President to submit to Congress a request for a special appropriation to cover the unfunded liability. If appropriations are not made to cover an unfunded liability in any fiscal year, the Secretary shall reduce the amount of the benefits paid under the insurance program to a total amount that does not exceed the assets of the Fund expected to accrue by the end of such fiscal year. Benefits that cannot be paid because of such a reduction shall be deferred and may be paid only after and to the extent that additional funds become available.

(f) DEFINITION OF PRESENT VALUE.—The Board of Actuaries shall define the term "present value" for purposes of this subsection.

(Added P.L. 104–106, § 512(a)(1), Feb. 10, 1996, 110 Stat. 303.)

§ 12530. Payment of benefits

(a) COMMENCEMENT OF PAYMENT.—An insured member who serves in excess of 30 days of covered service shall be paid the amount to which such member is entitled on a monthly basis beginning not later than one month after the 30th day of covered service.

(b) METHOD OF PAYMENT.—The Secretary shall prescribe in the regulations the manner in which payments shall be made to the member or to a person designated in accordance with subsection (c).

(c) DESIGNATED RECIPIENTS.—(1) A member may designate in writing another person (including a spouse, parent, or other person with an insurable interest, as determined in accordance with the regulations prescribed by the Secretary) to receive payments of insurance benefits under the insurance program.

(2) A member may direct that payments of insurance benefits for a person designated under paragraph (1) be deposited with a

bank or other financial institution to the credit of the designated person.

(d) RECIPIENTS IN EVENT OF DEATH OF INSURED MEMBER.—Any insurance payable under the insurance program on account of a deceased member's period of covered service shall be paid, upon the establishment of a valid claim, to the beneficiary or beneficiaries which the deceased member designated in writing. If no such designation has been made, the amount shall be payable in accordance with the laws of the State of the member's domicile.

(Added P.L. 104–106, § 512(a)(1), Feb. 10, 1996, 110 Stat. 304.)

§ 12531. Purchase of insurance

(a) PURCHASE AUTHORIZED.—The Secretary may, instead of or in addition to underwriting the insurance program through the Fund, purchase from one or more insurance companies a policy or policies of group insurance in order to provide the benefits required under this chapter. The Secretary may waive any requirement for full and open competition in order to purchase an insurance policy under this subsection.

(b) ELIGIBLE INSURERS.—In order to be eligible to sell insurance to the Secretary for purposes of subsection (a), an insurance company shall—

(1) be licensed to issue insurance in each of the 50 States and in the District of Columbia; and

(2) as of the most recent December 31 for which information is available to the Secretary, have in effect at least one percent of the total amount of insurance that all such insurance companies have in effect in the United States.

(c) ADMINISTRATIVE PROVISIONS.—(1) An insurance company that issues a policy for purposes of subsection (a) shall establish an administrative office at a place and under a name designated by the Secretary.

(2) For the purposes of carrying out this chapter, the Secretary may use the facilities and services of any insurance company issuing any policy for purposes of subsection (a), may designate one such company as the representative of the other companies for such purposes, and may contract to pay a reasonable fee to the designated company for its services.

(d) REINSURANCE.—The Secretary shall arrange with each insurance company issuing any policy for purposes of subsection (a) to reinsure, under conditions approved by the Secretary, portions of the total amount of the insurance under such policy or policies with such other insurance companies (which meet qualifying criteria prescribed by the Secretary) as may elect to participate in such reinsurance.

(e) TERMINATION.—The Secretary may at any time terminate any policy purchased under this section.

(Added P.L. 104–106, § 512(a)(1), Feb. 10, 1996, 110 Stat. 304.)

§ 12532. Termination for nonpayment of premiums; forfeiture

(a) TERMINATION FOR NONPAYMENT.—The coverage of a member under the insurance program shall terminate without prior notice upon a failure of the member to make required monthly pay-

ments of premiums for two consecutive months. The Secretary may provide in the regulations for reinstatement of insurance coverage terminated under this subsection.

(b) FORFEITURE.—Any person convicted of mutiny, treason, spying, or desertion, or who refuses to perform service in the armed forces or refuses to wear the uniform of any of the armed forces shall forfeit all rights to insurance under this chapter.

(Added P.L. 104–106, § 512(a)(1), Feb. 10, 1996, 110 Stat. 305.)

§ 12533. Termination of program

(a) IN GENERAL.—The Secretary shall terminate the insurance program in accordance with this section.

(b) TERMINATION OF NEW ENROLLMENTS.—The Secretary may not enroll a member of the Ready Reserve for coverage under the insurance program after the date of the enactment of this section.

(c) TERMINATION OF COVERAGE.—(1) The enrollment under the insurance program of insured members other than insured members described in paragraph (2) is terminated as of the date of the enactment of this section. The enrollment of an insured member described in paragraph (2) is terminated as of the date of the termination of the period of covered service of that member described in that paragraph.

(2) An insured member described in this paragraph is an insured member who on the date of the enactment of this section is serving on covered service for a period of service, or has been issued an order directing the performance of covered service, that satisfies or would satisfy the entitlement-to-benefits provisions of this chapter.

(d) TERMINATION OF PAYMENT OF BENEFITS.—The Secretary may not make any benefit payment under the insurance program after the date of the enactment of this section other than to an insured member who on that date (1) is serving on an order to covered service, (2) has been issued an order directing performance of covered service, or (3) has served on covered service before that date for which benefits under the program have not been paid to the member.

(e) TERMINATION OF INSURANCE FUND.—The Secretary shall close the Fund not later than 60 days after the date on which the last benefit payment from the Fund is made. Any amount remaining in the Fund when closed shall be covered into the Treasury as miscellaneous receipts.

(Added P.L. 105–85, § 512(a), Nov. 18, 1997, 111 Stat. 1729.)

CHAPTER 1215—MISCELLANEOUS PROHIBITIONS AND PENALTIES

Sec.
12551. Prohibition of use of Air Force Reserve AGR personnel for Air Force base security functions.
12552. Funeral honors functions at funerals for veterans.

§ 12551. Prohibition of use of Air Force Reserve AGR personnel for Air Force base security functions

(a) LIMITATION.—The Secretary of the Air Force may not use members of the Air Force Reserve who are AGR personnel for the performance of force protection, base security, or security police functions at an Air Force facility in the United States.

(b) AGR PERSONNEL DEFINED.—In this section, the term "AGR personnel" means members of the Air Force Reserve who are on active duty (other than for training) in connection with organizing, administering, recruiting, instructing, or training the Air Force Reserve.

(Added P.L. 105–85, § 515(a), Nov. 18, 1997, 111 Stat. 1732.)

§ 12552. Funeral honors functions at funerals for veterans

Performance by a Reserve of funeral honors functions at the funeral of a veteran (as defined in section 1491(h) of this title) may not be considered to be a period of drill or training, but may be performed as funeral honors duty under section 12503 of this title.

(Added P.L. 105–261, § 561(c)(1), Oct. 17, 1998, 112 Stat. 2031; amended in its entirety P.L. 106–65, § 578(g)(4), Oct. 5, 1999, 113 Stat. 628; amended P.L. 106–398, § 1[1087(a)(21)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291.)

CHAPTER 1217—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.
12601. Compensation: Reserve on active duty accepting from any person.
12602. Members of Army National Guard of United States and Air National Guard of United States: credit for service as members of National Guard.
12603. Attendance at inactive-duty training assemblies: commercial travel at Federal supply schedule rates.
12604. Billeting in Department of Defense facilities: Reserves attending inactive-duty training.
12605. Presentation of United States flag: members transferred from an active status or discharged after completion of eligibility for retired pay.

§ 12601. Compensation: Reserve on active duty accepting from any person

Any Reserve who, before being ordered to active duty, was receiving compensation from any person may, while he is on that duty, receive compensation from that person.

(Added P.L. 103–337, § 1662(g)(1), Oct. 5, 1994, 108 Stat. 2994 [derived from § 1033].)

§ 12602. Members of Army National Guard of United States and Air National Guard of United States: credit for service as members of National Guard

(a) For the purposes of laws providing benefits for members of the Army National Guard of the United States and their dependents and beneficiaries—

(1) military training, duty, or other service performed by a member of the Army National Guard of the United States in his status as a member of the Army National Guard for which he is entitled to pay from the United States shall be considered military training, duty, or other service, as the case may be, in Federal service as a Reserve of the Army;

(2) full-time National Guard duty performed by a member of the Army National Guard of the United States shall be considered active duty in Federal service as a Reserve of the Army; and

(3) inactive-duty training performed by a member of the Army National Guard of the United States in his status as a member of the Army National Guard, in accordance with regulations prescribed under section 502 of title 32 or other express provision of law, shall be considered inactive-duty training in Federal service as a Reserve of the Army.

(b) For the purposes of laws providing benefits for members of the Air National Guard of the United States and their dependents and beneficiaries—

(1) military training, duty, or other service performed by a member of the Air National Guard of the United States in his status as a member of the Air National Guard for which

he is entitled to pay from the United States shall be considered military training, duty, or other service, as the case may be, in Federal service as a Reserve of the Air Force;

(2) full-time National Guard duty performed by a member of the Air National Guard of the United States shall be considered active duty in Federal service as a Reserve of the Air Force; and

(3) inactive-duty training performed by a member of the Air National Guard of the United States in his status as a member of the Air National Guard, in accordance with regulations prescribed under section 502 of title 32 or other express provision of law, shall be considered inactive-duty training in Federal service as a Reserve of the Air Force.

(Added P.L. 103–337, § 1662(g)(1), Oct. 5, 1994, 108 Stat. 2995 [derived from §§ 3686, 8686].)

§ 12603. Attendance at inactive-duty training assemblies: commercial travel at Federal supply schedule rates

(a) FEDERAL SUPPLY SCHEDULE TRAVEL.—Commercial travel under Federal supply schedules is authorized for the travel of a Reserve to the location of inactive duty training to be performed by the Reserve and from that location upon completion of the training.

(b) REGULATIONS.—The Secretary of Defense shall prescribe in regulations such requirements, conditions, and restrictions for travel under the authority of subsection (a) as the Secretary considers appropriate. The regulations shall include policies and procedures for preventing abuses of that travel authority.

(c) REIMBURSEMENT NOT AUTHORIZED.—A Reserve is not entitled to Government reimbursement for the cost of travel authorized under subsection (a).

(d) TREATMENT OF TRANSPORTATION AS USE BY MILITARY DEPARTMENTS.—For the purposes of section 201(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(a)), travel authorized under subsection (a) shall be treated as transportation for the use of a military department.

(Added P.L. 105–261, § 635(a), Oct. 17, 1998, 112 Stat. 2044.)

§ 12604. Billeting in Department of Defense facilities: Reserves attending inactive-duty training [1]

(a) AUTHORITY FOR BILLETING ON SAME BASIS AS ACTIVE DUTY MEMBERS TRAVELING UNDER ORDERS.—The Secretary of Defense shall prescribe regulations authorizing a Reserve traveling to inactive-duty training at a location more than 50 miles from that Reserve's residence to be eligible for billeting in Department of Defense facilities on the same basis and to the same extent as a member of the armed forces on active duty who is traveling under orders away from the member's permanent duty station.

(b) PROOF OF REASON FOR TRAVEL.—The Secretary shall include in the regulations the means for confirming a Reserve's eligibility for billeting under subsection (a).

(Added P.L. 106–398, § 1[663(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–168.)

[1] Section 12604 applies with respect to periods of inactive-duty training beginning more than 180 days after Oct. 30, 2000, as provided in section 663(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654A–168).

§ 12605. Presentation of United States flag: members transferred from an active status or discharged after completion of eligibility for retired pay

(a) PRESENTATION OF FLAG.—Upon the transfer from an active status or discharge of a Reserve who has completed the years of service required for eligibility for retired pay under chapter 1223 of this title, the Secretary concerned shall present a United States flag to the member.

(b) MULTIPLE PRESENTATIONS NOT AUTHORIZED.—A member is not eligible for presentation of a flag under subsection (a) if the member has previously been presented a flag under this section or any provision of law providing for the presentation of a United States flag incident to release from active service for retirement.

(c) NO COST TO RECIPIENT.—The presentation of a flag under this section shall be at no cost to the recipient.

(Added P.L. 106–65, § 652(a)(1), Oct. 5, 1999, 113 Stat. 664.)

CHAPTER 1219—STANDARDS AND PROCEDURES FOR RETENTION AND PROMOTION

Sec.
12641. Standards and procedures: Secretary to prescribe.
12642. Standards and qualifications: result of failure to comply with.
12643. Boards for appointment, promotion, and certain other purposes: composition.
12644. Members physically not qualified for active duty: discharge or transfer to retired status.
12645. Commissioned officers: retention until completion of required service.
12646. Commissioned officers: retention of after completing 18 or more, but less than 20, years of service.
12647. Commissioned officers: retention in active status while assigned to Selective Service System or serving as United States property and fiscal officers.

§ 12641. Standards and procedures: Secretary to prescribe

(a) The Secretary concerned shall, by regulation, prescribe—

(1) standards and qualifications for the retention and promotion of members of the reserve components under his jurisdiction; and

(2) equitable procedures for the periodic determination of the compliance of each such Reserve with those standards and qualifications.

(b) If a Reserve fails to comply with the standards and qualifications prescribed under subsection (a), he shall—

(1) if qualified, be transferred to an inactive reserve status;

(2) if qualified, be retired without pay; or

(3) have his appointment or enlistment terminated.

(Aug. 10, 1956, § 1001, ch. 1041, 70A Stat. 79; transferred, redesignated § 12641, and amended P.L. 103–337, § 1662(h)(2), (4)(A), Oct. 5, 1994, 108 Stat. 2996–2997.)

§ 12642. Standards and qualifications: result of failure to comply with

(a) To be retained in an active status, a reserve commissioned officer must, in any applicable yearly period, attain the number of points under section 12732(a)(2) of this title prescribed by the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, and must conform to such other standards and qualifications as the Secretary concerned may prescribe. The Secretary may not prescribe a minimum of more than 50 points under this subsection.

(b) Subject to section 12645 of this title, a reserve commissioned officer who fails to attain the number of points, or to conform to the standards and qualifications, prescribed in subsection (a) shall—

(1) be transferred to the Retired Reserve if he is qualified and applies therefor;

(2) if he is not qualified or does not apply for transfer to the Retired Reserve, be transferred to an inactive status, if he is qualified therefor; or

(3) if he is not transferred to the Retired Reserve or an inactive status, be discharged from his reserve appointment.

(c) This section does not apply to commissioned warrant officers or to adjutants general or assistant adjutants general of States and Territories, Puerto Rico, and the District of Columbia.

(Added as § 1002 P.L. 85–861, § 1(22)(A), Sept. 2, 1958, 72 Stat. 1443, and amended P.L. 100–456, § 1234(a), Sept. 29, 1988, 102 Stat. 2059; transferred, redesignated § 12642, and amended P.L. 103–337, §§ 1662(h)(2), 1675(d)(1), Oct. 5, 1994, 108 Stat. 2996, 3018.)

§ 12643. Boards for appointment, promotion, and certain other purposes: composition

(a) Except as provided in section 612(a)(3) of this title and except for boards that may be convened to select Reserves for appointment in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps, each board convened for the appointment, promotion, demotion, involuntary release from active duty, discharge, or retirement of Reserves shall include at least one member of the Reserves, with the exact number of Reserves determined by the Secretary concerned in his discretion.

(b) Each member of a board convened for the selection for promotion, or for the demotion or discharge, of Reserves must be senior in rank to the persons under consideration by that board. However, a member serving in a legal advisory capacity may be junior in rank to any person, other than a judge advocate or law specialist, being considered by that board; and a member serving in a medical advisory capacity may be junior in rank to any person, other than a medical officer, being considered by that board.

(Aug. 10, 1956, § 266, ch. 1041, 70A Stat. 11; Dec. 12, 1980, P.L. 96–513, § 501(4), 94 Stat. 2907; July 10, 1981, P.L. 97–22, § 2(c), 95 Stat. 124; transferred and redesignated § 12643 P.L. 103–337, §§ 1662(h)(2), Oct. 5, 1994, 108 Stat. 2996.)

§ 12644. Members physically not qualified for active duty: discharge or transfer to retired status

Except as otherwise provided by law, the Secretary concerned may provide for the honorable discharge or the transfer to a retired status of members of the reserve components under his jurisdiction who are found to be not physically qualified for active duty. However, no member of the Army National Guard of the United States or the Air National Guard of the United States may be transferred under this subsection without the consent of the governor or other appropriate authority of the jurisdiction concerned.

(Aug. 10, 1956, § 1004, ch. 1041, 70A Stat. 79; July 7, 1960, P.L. 86–603, § 1(1), 74 Stat. 357; P.L. 103–160, § 519, Nov. 30, 1993, 107 Stat. 1651; amended, transferred, and redesignated § 12644 P.L. 103–337, §§ 1661(a)(4), 1662(h)(2),(4)(B), Oct. 5, 1994, 108 Stat. 2980, 2996, 2997.)

§ 12645. Commissioned officers: retention until completion of required service

(a) Except as provided in subsection (b), a reserve commissioned officer who has not completed the period of service required of him by section 651 of this title or any other provision of law may not be discharged or transferred from an active status under chapter 573, 1407, 1409, or 1411 of this title or chapter 21 of title 14.

Unless, under regulations prescribed by the Secretary concerned, he is promoted to a higher reserve grade, he shall be retained in an active status in his reserve grade for the rest of his period of required service and shall be an additional number to the authorized strength of his grade.

(b) Subsection (a) does not prevent the discharge or transfer from an active status of—

(1) a commissioned warrant officer;

(2) an officer on the active-duty list or a reserve active-status list who is found not qualified for promotion to the grade of first lieutenant, in the case of an officer of the Army, Air Force, or Marine Corps, or lieutenant (junior grade), in the case of an officer of the Navy;

(3) an officer on the active-duty list or reserve active-status list who has failed of selection for promotion for the second time to the grade of captain, in the case of an officer of the Army, Air Force, or Marine Corps, or to the grade of lieutenant, in the case of an officer of the Navy; or

(4) an officer whose discharge or transfer from an active status is required by law.

(Added as § 1005 P.L. 85–861, § 1(22)(B), Sept. 2, 1958, 72 Stat. 1444, and amended P.L. 93–586, § 2, Jan. 2, 1975, 88 Stat. 1920; P.L. 98–525, § 528(a), Oct. 19, 1984, 98 Stat. 2525; amended, transferred, and redesignated § 12645 P.L. 103–337, §§ 1627, 1662(h)(2), 1675(d)(2), Oct. 5, 1994, 108 Stat. 2962, 2996, 3018; amended P.L. 104–201, § 544(b), Sept. 23, 1996, 110 Stat. 2523.)

§ 12646. Commissioned officers: retention of after completing 18 or more, but less than 20, years of service

(a) If on the date prescribed for the discharge or transfer from an active status of a reserve commissioned officer he is entitled to be credited with at least 18, but less than 19, years of service computed under section 12732 of this title, he may not be discharged or transferred from an active status under chapter 573, 1407, 1409, or 1411 of this title or chapter 21 of title 14, without his consent before the earlier of the following dates—

(1) the date on which he is entitled to be credited with 20 years of service computed under section 12732 of this title; or

(2) the third anniversary of the date on which he would otherwise be discharged or transferred from an active status.

(b) If on the date prescribed for the discharge or transfer from an active status of a reserve commissioned officer he is entitled to be credited with at least 19, but less than 20, years of service computed under section 12732 of this title, he may not be discharged or transferred from an active status under chapter 573, 1407, 1409, or 1411 of this title or chapter 21 of title 14, without his consent before the earlier of the following dates—

(1) the date on which he is entitled to be credited with 20 years of service computed under section 12732 of this title; or

(2) the second anniversary of the date on which he would otherwise be discharged or transferred from an active status.

(c) An officer who is retained in an active status under subsection (a) or (b) is an additional number to those otherwise authorized.

(d) Subsections (a) and (b) do not apply to—

(1) officers who are discharged or transferred from an active status for physical disability, for cause, or because they have reached the age at which transfer from an active status or discharge is required by law; or

(2) commissioned warrant officers.

(e)(1) A reserve commissioned officer on active duty (other than for training) or full-time National Guard duty (other than full-time National Guard duty for training only) who, on the date on which the officer would otherwise be removed from an active status under section 6389, 14513, or 14514 of this title or section 740 of title 14, is within two years of qualifying for retirement under section 3911, 6323, or 8911 of this title may, in the discretion of the Secretary concerned and subject to paragraph (2), be retained on that duty for a period of not more than two years.

(2) An officer may be retained on active duty or full-time National Guard duty under paragraph (1) only if—

(A) at the end of the period for which the officer is retained the officer will be qualified for retirement under section 3911, 6323, or 8911 of this title; and

(B) the officer will not, before the end of that period, reach the age at which transfer from an active status or discharge is required by this title or title 14.

(3) An officer who is retained on active duty or full-time National Guard duty under this section may not be removed from an active status while on that duty.

(Added as § 1006 P.L. 85–861, § 1(22)(B), Sept. 2, 1958, 72 Stat. 1444, and amended P.L. 86–559, § 1(3)(A), June 30, 1960, 74 Stat. 264; P.L. 87–651, § 105, Sept. 7, 1962, 76 Stat. 508; P.L. 90–130, § 1(4), Nov. 8, 1967, 81 Stat. 374; P.L. 93–586, § 3, Jan. 2, 1975, 88 Stat. 1920; P.L. 96–322, § 2, Aug. 4, 1980, 94 Stat. 1015; P.L. 96–513, § 511(30), Dec. 12, 1980, 94 Stat. 2922; transferred, redesignated § 12646, and amended P.L. 103–337, §§ 1662(h)(2), 1675(d)(3), Oct. 5, 1994, 108 Stat. 2996, 3018.)

§ 12647. Commissioned officers: retention in active status while assigned to Selective Service System or serving as United States property and fiscal officers

Notwithstanding chapters 573, 1407, and 1409 of this title, a reserve commissioned officer, other than a commissioned warrant officer, who is assigned to the Selective Service System or who is a property and fiscal officer appointed, designated, or detailed under section 708 of title 32, may be retained in an active status in that assignment or position until he becomes 60 years of age.

(Added as § 1007 P.L. 85–861, § 1(22)(B), Sept. 2, 1958, 72 Stat. 1444, and amended P.L. 86–559, § 1(3)(B), June 30, 1960, 74 Stat. 265; transferred, redesignated § 12647, and amended P.L. 103–337, §§ 1662(h)(2), 1675(d)(4), Oct. 5, 1994, 108 Stat. 2996, 3018.)

CHAPTER 1221—SEPARATION [1]

Sec.
12681. Reserves: discharge authority.
12682. Reserves: discharge upon becoming ordained minister of religion.
12683. Reserve officers: limitation on involuntary separation.
12684. Reserves: separation for absence without authority or sentence to imprisonment.
12685. Reserves separated for cause: character of discharge.
12686. Reserves on active duty within two years of retirement eligibility: limitation on release from active duty.
12687. Reserves under confinement by sentence of court-martial: separation after six months confinement.

§ 12681. Reserves: discharge authority

Subject to other provisions of this title, reserve commissioned officers may be discharged at the pleasure of the President. Other Reserves may be discharged under regulations prescribed by the Secretary concerned.

(Added P.L. 103–337, § 1662(i)(1), Oct. 5, 1994, 108 Stat. 2997 [derived from § 1162(a)].)

§ 12682. Reserves: discharge upon becoming ordained minister of religion

Under regulations to be prescribed by the Secretary of Defense, a Reserve who becomes a regular or ordained minister of religion is entitled upon his request to a discharge from his reserve enlistment or appointment.

(Added P.L. 103–337, § 1662(i)(1), Oct. 5, 1994, 108 Stat. 2997 [derived from § 1162(b)].)

§ 12683. Reserve officers: limitation on involuntary separation

(a) An officer of a reserve component who has at least five years of service as a commissioned officer may not be separated from that component without his consent except—

(1) under an approved recommendation of a board of officers convened by an authority designated by the Secretary concerned; or

(2) by the approved sentence of a court-martial.

(b) Subsection (a) does not apply to any of the following:

(1) A separation under section 12684, 14901, or 14907 of this title.

(2) A dismissal under section 1161(a) of this title.

(3) A transfer under section 12213, 12214, 14514, or 14515 of this title.

(4) A separation of an officer who is in an inactive status in the Standby Reserve and who is not qualified for transfer

[1] Guard and Reserve transition initiatives in effect during the force reduction transition period beginning on Oct. 1, 1991, and ending on Dec. 31, 2001, as provided in subtitle B of title XLIV of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 102–484; 10 U.S.C. 12681 note), as amended, are set forth at the end of this chapter.

to the Retired Reserve or is qualified for transfer to the Retired Reserve and does not apply for such a transfer.

(Added P.L. 103–337, § 1662(i)(1), Oct. 5, 1994, 108 Stat. 2997 [derived from § 1163(a)]; amended P.L. 105–85, § 516, Nov. 18, 1997, 111 Stat. 1733; P.L. 105–261, § 1069(a)(8), Oct. 17, 1998, 112 Stat. 2136.)

§ 12684. Reserves: separation for absence without authority or sentence to imprisonment

The President or the Secretary concerned may drop from the rolls of the armed force concerned any Reserve—

(1) who has been absent without authority for at least three months;

(2) who may be separated under section 12687 of this title by reason of a sentence to confinement adjudged by a court-martial; or

(3) who is sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

(Added P.L. 103–337, § 1662(i)(1), Oct. 5, 1994, 108 Stat. 2998 [derived from § 1163(b)]; amended P.L. 104–106, § 563(b)(2), Feb. 10, 1996, 110 Stat. 325.)

§ 12685. Reserves separated for cause: character of discharge

A member of a reserve component who is separated for cause, except under section 12684 of this title, is entitled to a discharge under honorable conditions unless—

(1) the member is discharged under conditions other than honorable under an approved sentence of a court-martial or under the approved findings of a board of officers convened by an authority designated by the Secretary concerned; or

(2) the member consents to a discharge under conditions other than honorable with a waiver of proceedings of a court-martial or a board.

(Added P.L. 103–337, § 1662(i)(1), Oct. 5, 1994, 108 Stat. 2998 [derived from § 1163(c)].)

§ 12686. Reserves on active duty within two years of retirement eligibility: limitation on release from active duty

(a) LIMITATION.—Under regulations to be prescribed by the Secretary concerned, which shall be as uniform as practicable, a member of a reserve component who is on active duty (other than for training) and is within two years of becoming eligible for retired pay or retainer pay under a purely military retirement system, may not be involuntarily released from that duty before he becomes eligible for that pay, unless the release is approved by the Secretary.

(b) WAIVER.—With respect to a member of a reserve component who is to be ordered to active duty (other than for training) under section 12301 of this title pursuant to an order to active duty that specifies a period of less than 180 days and who (but for this subsection) would be covered by subsection (a), the Secretary concerned may require, as a condition of such order to active duty, that the member waive the applicability of subsection (a) to the

member for the period of active duty covered by that order. In carrying out this subsection, the Secretary concerned may require that a waiver under the preceding sentence be executed before the period of active duty begins.

(Added P.L. 103–337, § 1662(i)(1), Oct. 5, 1994, 108 Stat. 2998 [derived from § 1163(d)]; amended P.L. 104–201, § 533, Sept. 23, 1996, 110 Stat. 2520.)

§ 12687. Reserves under confinement by sentence of court-martial: separation after six months confinement

Except as otherwise provided in regulations prescribed by the Secretary of Defense, a Reserve sentenced by a court-martial to a period of confinement for more than six months may be separated from that Reserve's armed force at any time after the sentence to confinement has become final under chapter 47 of this title and the Reserve has served in confinement for a period of six months.

(Added P.L. 104–106, § 563(a)(2)(A), Feb. 10, 1996, 110 Stat. 325.)

Guard and Reserve transition initiatives in effect during the force reduction transition period beginning on October 1, 1991, and ending on December 31, 2001, under subtitle B of title XLIV of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 102–484), as amended, are as follows:

TITLE XLIV—PERSONNEL ADJUSTMENT, EDUCATION, AND TRAINING PROGRAMS

* * * * * * *

Subtitle B—Guard and Reserve Transition Initiatives

SEC. 4411. FORCE REDUCTION TRANSITION PERIOD DEFINED.

In this subtitle, the term "force reduction transition period" means the period beginning on October 1, 1991, and ending on December 31, 2001.

SEC. 4412. MEMBER OF SELECTED RESERVE DEFINED.

In this subtitle, the term "member of the Selected Reserve" means—

(1) a member of a unit in the Selected Reserve of the Ready Reserve; and

(2) a Reserve designated pursuant to section 268(b) of title 10, United States Code [now section 10143(a)], who is assigned to an authorized position the performance of the duties of which qualify the member for basic pay or compensation for inactive-duty training or both.

SEC. 4413. RESTRICTION ON RESERVE FORCE REDUCTION.

(a) IN GENERAL.—During the force reduction transition period, a member of the Selected Reserve may not be involuntarily discharged from a reserve component of the Armed Forces, or involuntarily transferred from the Selected Reserve, before the Secretary of Defense has prescribed and implemented regulations that govern the treatment of members of the Selected Reserve assigned to such units and members of the Selected Reserve that are being subjected to such actions and a copy of such regulations has been transmitted to the Committees on Armed Services of the Senate and House of Representatives.

(b) SAVINGS PROVISION.—Subsection (a) shall not apply to actions completed before [Oct. 23, 1992].

SEC. 4414. TRANSITION PLAN REQUIREMENTS.

(a) PURPOSE OF PLAN.—The purpose of the regulations referred to in section 4413 shall be to ensure that the members of the Selected Reserve are treated with fairness, with respect for their service to their country, and with attention to the adverse personal consequences of Selected Reserve unit inactivations, involuntary discharges of such members from the reserve components of the Armed Forces, and involuntary transfers of such members from the Selected Reserve.

(b) SCOPE OF PLAN.—The regulations shall include—

(1) such provisions as are necessary to implement the provisions of this subtitle and the amendments made by this subtitle; and

(2) such other policies and procedures for the recruitment of personnel for service in the Selected Reserve of the Ready Reserve, and for the reassignment, retraining, separation, and retirement of members of the Selected Reserve, as are appropriate for satisfying the needs of the Selected Reserve together with the purpose set out in subsection (a).

(c) MINIMUM REQUIREMENTS FOR PLAN.—The regulations shall include the following:

(1) The giving of a priority for enrollment in, or reassignment to, Selected Reserve units not being inactivated to—

(A) personnel being separated from active-duty or full-time National Guard duty; and

(B) members of the Selected Reserve whose units are inactivated.

(2) The giving of a priority to such personnel for transfer among the reserve components of the Armed Forces in order to facilitate reassignment to such units.

(3) A requirement that the Secretaries of the military departments take diligent actions to ensure that members of the reserve components of the Armed Forces are informed in easily understandable terms of the rights and benefits conferred upon such personnel by this subtitle, by the amendments made by this subtitle, and by such regulations.

(4) Such other protections, preferences, and benefits as the Secretary of Defense considers appropriate.

(d) UNIFORM APPLICABILITY.—The regulations shall apply uniformly to the Army, Navy, Air Force, and Marine Corps.

SEC. 4415. INAPPLICABILITY TO CERTAIN DISCHARGES AND TRANSFERS.

The protections, preferences, and benefits provided for in regulations prescribed in accordance with this subtitle do not apply with respect to a member of the Selected Reserve who is discharged from a reserve component of the Armed Forces or is transferred from the Selected Reserve to another category of the Ready Reserve, to the Standby Reserve, or to the Retired Reserve—

(1) at the request of the member unless such request was made and approved under a provision of this subtitle or section 12731a of title 10, United States Code (as added by section 4417);

(2) because the member no longer meets the qualifications for membership in the Selected Reserve set forth in any provision of law as in effect on the day before [Oct. 23, 1992];

(3) under adverse conditions, as characterized by the Secretary of the military department concerned; or

(4) if the member—

(A) is immediately eligible for retired pay based on military service under any provision of law;

(B) is serving as a military technician, as defined in section 8401(30) of title 5, United States Code, and would be immediately eligible for an unreduced annuity under the provisions of subchapter III of chapter 83 of such title, relating to the Civil Service Retirement and Disability System, or the provisions of chapter 84 of such title, relating to the Federal Employees' Retirement System; or

(C) is eligible for separation pay under section 1174 of title 10, United States Code.

SEC. 4416. FORCE REDUCTION PERIOD RETIREMENTS.

(a) TEMPORARY SPECIAL AUTHORITY FOR ELIMINATION OF OFFICERS FROM ACTIVE STATUS.—(1) During the force reduction transition period, the Secretary of the Army and the Secretary of the Air Force may, whenever the Secretary determines that such action is necessary, convene a board to recommend an appropriate number of officers in the reserve components of the Army or the Air Force, as the case may be, who (A) have met the age and service requirements specified in section 12731 of title 10, United States Code, for entitlement to retired pay for nonregular service except for not being at least 60 years of age, or (B) are immediately eligible for retired pay based on military service under any provision of law, for elimination from an active status.

(2) An officer who is to be eliminated from an active status under this section, shall, if qualified, be given an opportunity to request transfer to the appropriate Retired Reserve and, if the officer requests it, shall be so transferred. If the officer is

not transferred to the Retired Reserve, the officer shall, in the discretion of the Secretary concerned, be transferred to the appropriate inactive status list or be discharged.

(3) A member of the Army National Guard of the United States or the Air National Guard of the United States may not be eliminated from an active status under this section without the consent of the Governor or other appropriate authority of the State or territory, Puerto Rico, or the District of Columbia, whichever is concerned.

(b) TEMPORARY SPECIAL AUTHORITY.—During the force reduction transition period, the Secretary concerned may grant a member of the Selected Reserve under the age of 60 years the annual payments provided for under this section if—

(1) as of October 1, 1991, that member has completed at least 20 years of service computed under section 1332 of title 10, United States Code, or after that date and before the end of the force reduction period, such member completes 20 years of service computed under that section or section 12732;

(2) the member satisfies the requirements of paragraphs (3) and (4) of section 1331(a) or 12731(a) of title 10, United States Code; and

(3) the member applies for transfer to the Retired Reserve.

[(c) Repealed.]

(d) ANNUAL PAYMENT PERIOD.—An annual payment granted to a member under this section shall be paid for a period of years prescribed by the Secretary concerned, except that if the member attains 60 years of age during that period the entitlement to the annual payment shall terminate on the member's 60th birthday. A period prescribed for purposes of this subsection may not be less than one year nor more than five years. [Authority to prescribe a period of less than five years, rather than a fixed period of five years, applicable only in the case of payments to a member under subsection (b) that are granted by the Secretary of Defense after Oct. 4, 1994.]

(e) COMPUTATION OF ANNUAL PAYMENT.—(1) The annual payment for a member shall be equal to the amount determined by multiplying the product of 12 and the applicable percent under paragraph (2) by the monthly basic pay to which the member would be entitled if the member were serving on active duty as of the date the member is transferred to the Retired Reserve.

(2)(A) Subject to subparagraph (B) the percent applicable to a member for purposes of paragraph (1) is 5 percent plus 0.5 percent for each full year of service, computed under section 12732 of title 10, United States Code, that a member has completed in excess of 20 years before transfer to the Retired Reserve.

(B) The maximum percent applicable under this paragraph is 10 percent.

(3) In the case of a member who will attain 60 years of age during the 12-month period following the date on which an annual payment is due, the payment shall be paid on a prorated basis of one-twelfth of the annual payment for each full month between the date on which the payment is due and the date on which the member attains age 60. [This paragraph applies only in the case of payments to a member under subsection (b) that are granted by the Secretary of Defense after Oct. 4, 1994.]

(f) APPLICABILITY SUBJECT TO NEEDS OF THE SERVICE.—(1) Subject to regulations prescribed by the Secretary of Defense, the Secretary concerned may limit the applicability of this section to any category of personnel defined by the Secretary concerned in order to meet a need of the armed force under the jurisdiction of the Secretary concerned to reduce the number of members in certain grades, the number of members who have completed a certain number of years of service, or the number of members who possess certain military skills or are serving in designated competitive categories.

(2) A limitation under paragraph (1) shall be consistent with the purpose set forth in section 4414(a).

(g) NONDUPLICATION OF BENEFITS.—A member transferred to the Retired Reserve under the authority of section 12731a of title 10, United States Code (as added by section 4417), may not be paid annual payments under this section.

(h) FUNDING.—To the extent provided in appropriations Acts, payments under this section in a fiscal year shall be made out of amounts available to the Department of Defense for that fiscal year for the pay of reserve component personnel.

SEC. 4417. RETIREMENT WITH 15 YEARS OF SERVICE.

[Added section 1331a (now 12731a) of title 10 and amended table of sections at beginning of chapter 67 of such title.]

SEC. 4418. SEPARATION PAY.

(a) ELIGIBILITY.—Subject to section 4415, a member of the Selected Reserve who, after completing at least 6 years of service computed under section 12732 of title 10, United States Code, and before completing 15 years of service computed under that section, is involuntarily discharged from a reserve component of the Armed Forces or is involuntarily transferred from the Selected Reserve during the force reduction transition period is entitled to separation pay.

(b) AMOUNT OF SEPARATION PAY.—(1) The amount of separation pay which may be paid to a person under this section is 15 percent of the product of—

(A) the years of service credited to that person under section 12733 of title 10, United States Code; and

(B) 62 times the daily equivalent of the monthly basic pay to which the person would have been entitled had the person been serving on active duty at the time of the person's discharge or transfer.

(2) In the case of a person who receives separation pay under this section and who later receives basic pay, compensation for inactive duty training, or retired pay under any provision of law, such basic pay, compensation, or retired pay, as the case may be, shall be reduced by 75 percent until the total amount withheld through such reduction equals the total amount of the separation pay received by that person under this section.

(c) RELATIONSHIP TO OTHER SERVICE-RELATED PAY.—Subsections (g) and (h) of section 1174 of title 10, United States Code, shall apply to separation pay under this section.

(d) REGULATIONS.—The Secretary of Defense shall prescribe regulations, which shall be uniform for the Army, Navy, Air Force, and Marine Corps, for the administration of this section.

SEC. 4419. WAIVER OF CONTINUED SERVICE REQUIREMENT FOR CERTAIN RESERVISTS FOR MONTGOMERY GI BILL BENEFITS.

[Amended section 2133(b)(1) of title 10 and section 3012(b)(1)(B) of title 38.]

SEC. 4420. COMMISSARY AND EXCHANGE PRIVILEGES.

The Secretary of Defense shall prescribe regulations to authorize a person who involuntarily ceases to be a member of the Selected Reserve during the force reduction transition period to continue to use commissary and exchange stores in the same manner as a member of the Selected Reserve for a period of two years beginning on the later of—

(1) the date on which that person ceases to be a member of the Selected Reserve; or

(2) [Oct. 23, 1992].

SEC. 4421. APPLICABILITY AND TERMINATION OF BENEFITS.

(a) APPLICABILITY SUBJECT TO NEEDS OF THE SERVICE.—(1) Subject to regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned may limit the applicability of a benefit provided under sections 4418 through 4420 to any category of personnel defined by the Secretary concerned in order to meet a need of the armed force under the jurisdiction of the Secretary concerned to reduce the number of members in certain grades, the number of members who have completed a certain number of years of service, or the number of members who possess certain military skills or are serving in designated competitive categories.

(2) A limitation under paragraph (1) shall be consistent with the purpose set forth in section 4414(a).

(b) INAPPLICABILITY TO CERTAIN SEPARATIONS AND REASSIGNMENTS.—Sections 4418 through 4420 do not apply with respect to personnel who cease to be members of the Selected Reserve under adverse conditions, as characterized by the Secretary of the military department concerned.

(c) TERMINATION OF BENEFITS.—The eligibility of a member of a reserve component of the Armed Forces (after having involuntarily ceased to be a member of the Selected Reserve) to receive benefits and privileges under sections 4418 through 4420 terminates upon the involuntary separation of such member from the Armed Forces under adverse conditions, as characterized by the Secretary of the military department concerned.

SEC. 4422. READJUSTMENT BENEFITS FOR CERTAIN VOLUNTARILY SEPARATED MEMBERS OF THE RESERVE COMPONENTS.

[Amended sections 1174a and 1175 of title 10.]

CHAPTER 1223—RETIRED PAY FOR NON-REGULAR SERVICE

Sec.
12731. Age and service requirements.
12731a. Temporary special retirement qualification authority.
12731b. Special rule for members with physical disabilities not incurred in line of duty.
12732. Entitlement to retired pay: computation of years of service.
12733. Computation of retired pay: computation of years of service.
12734. Time not creditable toward years of service.
12735. Inactive status list.
12736. Service credited for retired pay benefits not excluded for other benefits.
12737. Limitation on active duty.
12738. Limitations on revocation of retired pay.
12739. Computation of retired pay.
12740. Eligibility: denial upon certain punitive discharges or dismissals.
12741. Retirement from active reserve service performed after regular retirement.

§ 12731. Age and service requirements

(a) Except as provided in subsection (c), a person is entitled, upon application, to retired pay computed under section 12739 of this title, if the person—

(1) is at least 60 years of age;

(2) has performed at least 20 years of service computed under section 12732 of this title;

(3) performed the last eight years of qualifying service while a member of any category named in section 12732(a)(1) of this title, but not while a member of a regular component, the Fleet Reserve, or the Fleet Marine Corps Reserve; and

(4) is not entitled, under any other provision of law, to retired pay from an armed force or retainer pay as a member of the Fleet Reserve or the Fleet Marine Corps Reserve.

(b) Application for retired pay under this section must be made to the Secretary of the military department, or the Secretary of Transportation, as the case may be, having jurisdiction at the time of application over the armed force in which the applicant is serving or last served.

(c)(1) A person who, before August 16, 1945, was a Reserve of an armed force, or a member of the Army without component or other category covered by section 12732(a)(1) of this title except a regular component, is not eligible for retired pay under this chapter unless—

(A) the person performed active duty during World War I or World War II; or

(B) the person performed active duty (other than for training) during the Korean conflict, the Berlin crisis, or the Vietnam era.

(2) In this subsection:

(A) The term "World War I" means the period beginning on April 6, 1917, and ending on November 11, 1918.

(B) The term "World War II" means the period beginning on September 9, 1940, and ending on December 31, 1946.

(C) The term "Korean conflict" means the period beginning on June 27, 1950, and ending on July 27, 1953.

(D) The term "Berlin crisis" means the period beginning on August 14, 1961, and ending on May 30, 1963.

(E) The term "Vietnam era" means the period beginning on August 5, 1964, and ending on March 27, 1973.

(d) The Secretary concerned shall notify each person who has completed the years of service required for eligibility for retired pay under this chapter. The notice shall be sent, in writing, to the person concerned within one year after the person completes that service. The notice shall include notice of the elections available to such person under the Survivor Benefit Plan established under subchapter II of chapter 73 of this title and the Supplemental Survivor Benefit Plan established under subchapter III of that chapter, and the effects of such elections.

(e) Notwithstanding section 8301 of title 5, the date of entitlement to retired pay under this section shall be the date on which the requirements of subsection (a) have been completed.

(f) In the case of a person who completes the service requirements of subsection (a)(2) during the period beginning on October 5, 1994, and ending on December 31, 2001, the provisions of subsection (a)(3) shall be applied by substituting "the last six years" for "the last eight years".

(Aug. 10, 1956, § 1331, ch. 1041, 70A Stat. 102; Aug. 21, 1958, P.L. 85–704, 72 Stat. 702; Sept. 2, 1958, P.L. 85–861, § 33(a)(8), 72 Stat. 1564; Oct. 14, 1966, P.L. 89–652, § 1, 80 Stat. 902; Aug. 13, 1968, P.L. 90–485, § 2, 82 Stat. 754; Sept. 30, 1978, P.L. 95–397, § 206, 92 Stat. 847; Dec. 12, 1980, P.L. 96–513, § 511(47), 94 Stat. 2924; Sept. 24, 1983, P.L. 98–94, § 924(a), 97 Stat. 644; Nov. 29, 1989, P.L. 101–189, § 1404(b), 103 Stat. 1586; amended, transferred, redesignated § 12731, and revised in its entirety P.L. 103–337, §§ 636, 1662(j)(1), Oct. 5, 1994, 108 Stat. 2790, 2999; P.L. 104–106, § 1501(b)(20), Feb. 10, 1996, 110 Stat. 497; P.L. 105–261, § 561(n)(1), Oct. 17, 1998, 112 Stat. 2026; Oct. 30, 2000, P.L. 106–398, § 1[571(n)(1)], 114 Stat. 1654, 1654A–135.)

§ 12731a. Temporary special retirement qualification authority

(a) RETIREMENT WITH AT LEAST 15 YEARS OF SERVICE.—For the purposes of section 12731 of this title, the Secretary concerned may—

(1) during the period described in subsection (b), determine to treat a member of the Selected Reserve of a reserve component of the armed force under the jurisdiction of that Secretary as having met the service requirements of subsection (a)(2) of that section and provide the member with the notification required by subsection (d) of that section if the member—

(A) as of October 1, 1991, has completed at least 15, and less than 20, years of service computed under section 12732 of this title; or

(B) after that date and before the end of the period described in subsection (b), completes 15 years of service computed under that section; and

(2) upon the request of the member submitted to the Secretary, transfer the member to the Retired Reserve.

(b) PERIOD OF AUTHORITY.—The period referred to in subsection (a)(1) is the period beginning on October 23, 1992, and ending on December 31, 2001.

(c) APPLICABILITY SUBJECT TO NEEDS OF THE SERVICE.—(1) The Secretary concerned may limit the applicability of subsection (a) to any category of personnel defined by the Secretary in order to meet a need of the armed force under the jurisdiction of the Secretary to reduce the number of members in certain grades, the number of members who have completed a certain number of years of service, or the number of members who possess certain military skills or are serving in designated competitive categories.

(2) A limitation under paragraph (1) shall be consistent with the purpose set forth in section 4414(a) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2713).

(3) Notwithstanding the provisions of section 4415(2) of the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992 (division D of Public Law 102–484; 106 Stat. 2714), the Secretary concerned may, consistent with the other provisions of this section, provide the notification required by section 12731(d) of this title to a member who no longer meets the qualifications for membership in the Selected Reserve solely because the member is unfit because of physical disability. Such notification may not be made if the disability is the result of the member's intentional misconduct, willful neglect, or willful failure to comply with standards and qualifications for retention established by the Secretary concerned or was incurred during a period of unauthorized absence.

(d) EXCLUSION.—This section does not apply to persons referred to in section 12731(c) of this title.

(e) REGULATIONS.—The authority provided in this section shall be subject to regulations prescribed by the Secretary of Defense and by the Secretary of Transportation with respect to the Coast Guard.

(Added as § 1331a P.L. 102–484, § 4417(a), Oct. 23, 1992, 106 Stat. 2716, and amended P.L. 103–35, § 201(f)(2), May 31, 1993, 107 Stat. 99; P.L. 103–160, §§ 561(f)(4), 564(c), Nov. 30, 1993, 107 Stat. 1668, 1670; amended, transferred, redesignated § 12731a, and revised in its entirety P.L. 103–337, §§ 517, 1662(j)(1), Oct. 5, 1994, 108 Stat. 2754, 3000; P.L. 104–106, § 1501(b)(21), Feb. 10, 1996, 110 Stat. 497; P.L. 105–261, § 561(n)(2), Oct. 17, 1998, 112 Stat. 2026; P.L. 106–398, § 1[571(n)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–135.)

§ 12731b. Special rule for members with physical disabilities not incurred in line of duty

(a) In the case of a member of the Selected Reserve of a reserve component who no longer meets the qualifications for membership in the Selected Reserve solely because the member is unfit because of physical disability, the Secretary concerned may, for purposes of section 12731 of this title, determine to treat the member as having met the service requirements of subsection (a)(2) of that section and provide the member with the notification required by subsection (d) of that section if the member has completed at least 15, and less than 20, years of service computed under section 12732 of this title.

(b) Notification under subsection (a) may not be made if—

(1) the disability was the result of the member's intentional misconduct, willful neglect, or willful failure to comply

with standards and qualifications for retention established by the Secretary concerned; or

(2) the disability was incurred during a period of unauthorized absence.

(Added P.L. 106–65, § 653(b)(1), Oct. 5, 1999, 113 Stat. 666.)

§ 12732. Entitlement to retired pay: computation of years of service [1]

(a) Except as provided in subsection (b), for the purpose of determining whether a person is entitled to retired pay under section 12731 of this title, the person's years of service are computed by adding the following:

(1) The person's years of service, before July 1, 1949, in the following:

(A) The armed forces.

(B) The federally recognized National Guard before June 15, 1933.

(C) A federally recognized status in the National Guard before June 15, 1933.

(D) The National Guard after June 14, 1933, if his service therein was continuous from the date of his enlistment in the National Guard, or his Federal recognition as an officer therein, to the date of his enlistment or appointment, as the case may be, in the National Guard of the United States, the Army National Guard of the United States, or the Air National Guard of the United States.

(E) The Naval Reserve Force.

(F) The Naval Militia that conformed to the standards prescribed by the Secretary of the Navy.

(G) The National Naval Volunteers.

(H) The Army Nurse Corps, the Navy Nurse Corps, the Nurse Corps Reserve of the Army, or the Nurse Corps Reserve of the Navy, as it existed at any time after February 2, 1901.

(I) The Army under an appointment under the Act of December 22, 1942 (ch. 805, 56 Stat. 1072).

(J) An active full-time status, except as a student or apprentice, with the Medical Department of the Army as a civilian employee—

(i) in the dietetic or physical therapy categories, if the service was performed after April 6, 1917, and before April 1, 1943; or

(ii) in the occupational therapy category, if the service was performed before appointment in the Army Nurse Corps or the Women's Medical Specialist Corps and before January 1, 1949, or before appoint-

[1] Section 531(b) of the National Defense Authorization Act for Fiscal Year 1997 (P.L. 104–201; 110 Stat. 2517) provides:

(b) TRACKING SYSTEM FOR AWARD OF RETIREMENT POINTS.—To better enable the Secretary of Defense and Congress to assess the cost and the effect on readiness of the amendment made by subsection (a) and of other potential changes to the Reserve retirement system under chapter 1223 of title 10, United States Code, the Secretary of Defense shall require the Secretary of each military department to implement a system to monitor the award of retirement points for purposes of that chapter by categories in accordance with the recommendation set forth in the August 1988 report of the Sixth Quadrennial Review of Military Compensation.

ment in the Air Force before January 1, 1949, with a view to designation as an Air Force nurse or medical specialist.

(2) Each one-year period, after July 1, 1949, in which the person has been credited with at least 50 points on the following basis:

(A) One point for each day of—

(i) active service; or

(ii) full-time service under sections 316, 502, 503, 504, and 505 of title 32 while performing annual training duty or while attending a prescribed course of instruction at a school designated as a service school by law or by the Secretary concerned;

if that service conformed to required standards and qualifications.

(B) One point for each attendance at a drill or period of equivalent instruction that was prescribed for that year by the Secretary concerned and conformed to the requirements prescribed by law, including attendance under section 502 of title 32.

(C) Points at the rate of 15 a year for membership—

(i) in a reserve component of an armed force,

(ii) in the Army or the Air Force without component, or

(iii) in any other category covered by subsection (a)(1) except a regular component.

(D) Points credited for the year under section 2126(b) of this title.

(E) One point for each day on which funeral honors duty is performed for at least two hours under section 12503 of this title or section 115 of title 32, unless the duty is performed while in a status for which credit is provided under another subparagraph of this paragraph.

For the purpose of clauses (A), (B), (C), (D), and (E), service in the National Guard shall be treated as if it were service in a reserve component, if the person concerned was later appointed in the National Guard of the United States, the Army National Guard of the United States, the Air National Guard of the United States, or as a Reserve of the Army or the Air Force, and served continuously in the National Guard from the date of his Federal recognition to the date of that appointment.

(3) The person's years of active service in the Commissioned Corps of the Public Health Service.

(4) The person's years of active commissioned service in the National Oceanic and Atmospheric Administration (including active commissioned service in the Environmental Science Services Administration and in the Coast and Geodetic Survey).

(b) The following service may not be counted under subsection (a):

(1) Service (other than active service) in an inactive section of the Organized Reserve Corps or of the Army Reserve, or in an inactive section of the officers' section of the Air Force Reserve.

(2) Service (other than active service) after June 30, 1949, while on the Honorary Retired List of the Naval Reserve or of the Marine Corps Reserve.

(3) Service in the inactive National Guard.

(4) Service in a non-federally recognized status in the National Guard.

(5) Service in the Fleet Reserve or the Fleet Marine Corps Reserve.

(6) Service as an inactive Reserve nurse of the Army Nurse Corps established by the Act of February 2, 1901 (ch. 192, 31 Stat. 753), as amended, and service before July 1, 1938, as an inactive Reserve nurse of the Navy Nurse Corps established by the Act of May 13, 1908 (ch. 166, 35 Stat. 146).

(7) Service in any status other than that as commissioned officer, warrant officer, nurse, flight officer, aviation midshipman, appointed aviation cadet, or enlisted member, and that described in clauses (I) and (J) of subsection (a)(1).

(Aug. 10, 1956, § 1332, ch. 1041, 70A Stat. 102; Sept. 2, 1958, P.L. 85–861, § 33(a)(9), 72 Stat. 1565; Aug. 25, 1959, P.L. 86–197, § 1(1)–(3), 73 Stat. 425; Oct. 8, 1964, P.L. 88–636, § 1, 78 Stat. 1034, Dec. 26, 1974, P.L. 93–545, § 1, 88 Stat. 1741; Dec. 12, 1980, P.L. 96–513, § 511(48), 94 Stat. 2924; transferred, redesignated § 12732, and revised in its entirety P.L. 103–337, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 3000; P.L. 104–201, § 543(b)(1), Sept. 23, 1996, 110 Stat. 2522; P.L. 106–65, § 578(h)(1), Oct. 5, 1999, 113 Stat. 628.)

§ 12733. Computation of retired pay: computation of years of service

For the purpose of computing the retired pay of a person under this chapter, the person's years of service and any fraction of such a year are computed by dividing 360 into the sum of the following:

(1) The person's days of active service.

(2) The person's days of full-time service under sections 316, 502, 503, 504, and 505 of title 32 while performing annual training duty or while attending a prescribed course of instruction at a school designated as a service school by law or by the Secretary concerned.

(3) One day for each point credited to the person under clause (B), (C), or (D) of section 12732(a)(2) of this title, but not more than—

(A) 60 days in any one year of service before the year of service that includes September 23, 1996;

(B) 75 days in the year of service that includes September 23, 1996, and in any subsequent year of service before the year of service that includes the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001; and

(C) 90 days in the year of service that includes the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 and in any subsequent year of service.

(4) One day for each point credited to the person under subparagraph (E) of section 12732(a)(2) of this title.

(5) 50 days for each year before July 1, 1949, and proportionately for each fraction of a year, of service (other than active service) in a reserve component of an armed force, in the Army or the Air Force without component, or in any other cat-

egory covered by section 12732(a)(1) of this title, except a regular component.

(Aug. 10, 1956, § 1333, ch. 1041, 70A Stat. 103; Sept. 2, 1958, P.L. 85–861, § 33(a)(10), 72 Stat. 1565; transferred, redesignated § 12733, and revised in its entirety P.L. 103–337, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 3002; P.L. 104–201, §§ 531(a), 543(b)(2), Sept. 23, 1996, 110 Stat. 2517, 2522; P.L. 105–85, § 1073(a)(67), Nov. 18, 1997, 111 Stat. 1904; P.L. 106–65, § 578(h)(2), Oct. 5, 1999, 113 Stat. 628; Oct. 30, 2000, P.L. 106–398, § 1[652], 114 Stat. 1654, 1654A–163.)

§ 12734. Time not creditable toward years of service

(a) Service in an inactive status may not be counted in any computation of years of service under this chapter.

(b) Time spent after retirement (without pay) for failure to conform to standards and qualifications prescribed under section 12641 of this title may not be credited in a computation of years of service under this chapter.

(Aug. 10, 1956, § 1334, ch. 1041, 70A Stat. 104; Sept. 7, 1962, P.L. 87–651, § 108, 76 Stat. 509; transferred, redesignated § 12734, and revised in its entirety P.L. 103–337, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 3003.)

§ 12735. Inactive status list

(a) A member who would be eligible for retired pay under this chapter but for the fact that that member is under 60 years of age may be transferred, at his request and by direction of the Secretary concerned, to such inactive status list as may be established for members of his armed force, other than members of a regular component.

(b) While on an inactive status list under subsection (a), a member is not required to participate in any training or other program prescribed for his component.

(c) The Secretary may at any time recall to active status a member who is on an inactive status list under subsection (a).

(Aug. 10, 1956, § 1335, ch. 1041, 70A Stat. 104; transferred, redesignated § 12735, and revised in its entirety P.L. 103–337, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 3003.)

§ 12736. Service credited for retired pay benefits not excluded for other benefits

No period of service included wholly or partly in determining a person's right to, or the amount of, retired pay under this chapter may be excluded in determining his eligibility for any annuity, pension, or old-age benefit, under any other law, on account of civilian employment by the United States or otherwise, or in determining the amount payable under that law, if that service is otherwise properly credited under it.

(Aug. 10, 1956, § 1336, ch. 1041, 70A Stat. 104; transferred, redesignated § 12736, and revised in its entirety P.L. 103–337, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 3003.)

§ 12737. Limitation on active duty

A member of the armed forces may not be ordered to active duty solely for the purpose of qualifying the member for retired pay under this chapter.

(Aug. 10, 1956, § 1337, ch. 1041, 70A Stat. 104; transferred, redesignated § 12737, and revised in its entirety P.L. 103–337, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 3003.)

§ 12738. Limitations on revocation of retired pay

(a) After a person is granted retired pay under this chapter, or is notified in accordance with section 12731(d) of this title that the

person has completed the years of service required for eligibility for retired pay under this chapter, the person's eligibility for retired pay may not be denied or revoked on the basis of any error, miscalculation, misinformation, or administrative determination of years of service performed as required by section 12731(a)(2) of this title, unless it resulted directly from the fraud or misrepresentation of the person.

(b) The number of years of creditable service upon which retired pay is computed may be adjusted to correct any error, miscalculation, misinformation, or administrative determination and when such a correction is made the person is entitled to retired pay in accordance with the number of years of creditable service, as corrected, from the date the person is granted retired pay.

(Added as § 1406 by P.L. 89–652, § 2(1), Oct. 14, 1966, 80 Stat. 902; transferred, redesignated § 1338, and amended P.L. 98–348, § 104(a), July 1, 1986, 100 Stat. 686; transferred, redesignated § 12731, and revised in its entirety P.L. 103–337, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 3003.)

§ 12739. Computation of retired pay

(a) The monthly retired pay of a person entitled to that pay under this chapter is the product of—

(1) the retired pay base for that person as computed under section 1406(b)(2) or 1407 of this title; and

(2) 2½ percent of the years of service credited to that person under section 12733 of this title.

(b) The amount computed under subsection (a) may not exceed 75 percent of the retired pay base upon which the computation is based.

(c) Amounts computed under this section, if not a multiple of $1, shall be rounded down to the next lower multiple of $1.

(Added P.L. 103–337, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 3004 [derived from § 1401 (formula no. 3)].)

§ 12740. Eligibility: denial upon certain punitive discharges or dismissals

A person who—

(1) is convicted of an offense under the Uniform Code of Military Justice (chapter 47 of this title) and whose sentence includes death; or

(2) is separated pursuant to sentence of a court-martial with a dishonorable discharge, a bad conduct discharge, or (in the case of an officer) a dismissal,

is not eligible for retired pay under this chapter.

(Added P.L. 104–106, § 632(a)(1), Feb. 10, 1996, 110 Stat. 365.)

§ 12741. Retirement from active reserve service performed after regular retirement [2]

(a) ELECTION OF RESERVE RETIRED PAY.—A person who, after becoming entitled to retired or retainer pay under chapter 65, 367, 571, or 867 of this title, serves in an active status in a reserve component is entitled to retired pay under this chapter if—

[2] Section 12741 takes effect 180 days after Oct. 30, 2000, and applies with respect to retired pay payable for months beginning on or after that effective date, as provided in section 653(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654, 1654A–165).

(1) the person would, but for paragraphs (3) and (4) of section 12731(a) of this title, otherwise be entitled to retired pay under this chapter;

(2) the person elects under this section to received retired pay under this chapter; and

(3) the person's service in an active status after having become entitled to retired or retainer pay under that chapter is determined by the Secretary concerned to have been satisfactory.

(b) ACTIONS TO EFFECTUATE ELECTION.—As of the effective date of an election made by a person under subsection (a), the Secretary concerned shall—

(1) terminate the person's entitlement to retired or retainer pay under the applicable chapter of this title referred to in subsection (a); and

(2) in the case of a reserve commissioned officer, transfer the officer to the Retired Reserve.

(c) TIME AND FORM OF ELECTION.—An election under subsection (b) shall be made within such time and in such form as the Secretary concerned requires.

(d) EFFECTIVE DATE OF ELECTION.—An election made by a person under subsection (b) shall be effective—

(1) except as provided in paragraph (2)(B), as of the date on which the person attains 60 years of age, if the Secretary concerned receives the election in accordance with this section within 180 days after that date; or

(2) on the first day of the first month that begins after the date on which the Secretary concerned receives the election in accordance with this section, if—

(A) the date of the receipt of the election is more than 180 days after the date on which the person attains 60 years of age; or

(B) the person retires from service in an active status within that 180-day period.

(Added P.L. 106–398, § 1[653(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–164.)

CHAPTER 1225—RETIRED GRADE

Sec.
12771. Reserve officers: grade on transfer to Retired Reserve.
12772. Reserve commissioned officers who have served as Attending Physician to the Congress: grade on transfer to Retired Reserve.
12773. Limitation on accrual of increased pay or benefits.
12774. Retired lists.

§ 12771. Reserve officers: grade on transfer to Retired Reserve

Unless entitled to a higher grade under another provision of law, a reserve commissioned officer, other than a commissioned warrant officer, who is transferred to the Retired Reserve is entitled to be placed on the retired list established by section 12774(a) of this title in the highest grade in which he served satisfactorily, as determined by the Secretary concerned and in accordance with section 1370(d), in the armed force in which he is serving on the date of transfer.

(Added P.L. 103–337, § 1662(k)(1), Oct. 5, 1994, 108 Stat. 3005 [derived from § 1374(b),(f)].)

§ 12772. Reserve commissioned officers who have served as Attending Physician to the Congress: grade on transfer to Retired Reserve

Unless entitled to a higher grade under another provision of law, a reserve commissioned officer who is transferred to the Retired Reserve after having served in the position of Attending Physician to the Congress is entitled to be placed on the retired list established by section 12774(a) of this title in the grade held by the officer while serving in that position.

(Added P.L. 103–337, § 1662(k)(1), Oct. 5, 1994, 108 Stat. 3005 [derived from § 1374(e)].)

§ 12773. Limitation on accrual of increased pay or benefits

Unless otherwise provided by law, no person is entitled to increased pay or other benefits because of sections 12771 and 12772 of this title.

(Added P.L. 103–337, § 1662(k)(1), Oct. 5, 1994, 108 Stat. 3005 [derived from § 1374(d)].)

§ 12774. Retired lists

(a) Under regulations prescribed by the Secretary concerned, there shall be maintained retired lists containing the names of the Reserves of the armed forces under the Secretary's jurisdiction who are in the Retired Reserve.

(b) The Secretary of the Navy shall maintain a United States Naval Reserve Retired List containing the names of members of the Naval Reserve and the Marine Corps Reserve entitled to retired pay.

(Added P.L. 103–337, § 1662(k)(1), Oct. 5, 1994, 108 Stat. 3006 [derived from §§ 1376(a), 6017].)

PART III—PROMOTION AND RETENTION OF OFFICERS ON THE RESERVE ACTIVE-STATUS LIST

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CHAPTER 1401—APPLICABILITY AND RESERVE ACTIVE-STATUS LISTS

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§ 14001. Applicability of this part

This chapter and chapters 1403 through 1411 of this title apply, as appropriate, to all reserve officers of the Army, Navy, Air Force, and Marine Corps except warrant officers.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2922.)

§ 14002. Reserve active-status lists: requirement for each armed force

(a) The Secretary of each military department shall maintain a single list, to be known as the reserve active-status list, for each armed force under the Secretary's jurisdiction. That list shall include the names of all reserve officers of that armed force who are in an active status other than those on an active-duty list described in section 620 of this title or warrant officers (including commissioned warrant officers).

(b) The reserve active-status list for the Army shall include officers in the Army Reserve and the Army National Guard of the United States. The reserve active-status list for the Air Force shall include officers in the Air Force Reserve and the Air National Guard of the United States. The Secretary of the Navy shall maintain separate lists for the Naval Reserve and the Marine Corps Reserve.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2922.)

§ 14003. Reserve active-status lists: position of officers on the list

(a) POSITION ON LIST.—Officers shall be carried on the reserve active-status list of the armed force of which they are members in the order of seniority of the grade in which they are serving in an active status. Officers serving in the same grade shall be carried in the order of their rank in that grade.

(b) EFFECT ON POSITION HELD BY REASON OF TEMPORARY APPOINTMENT OR ASSIGNMENT.—An officer whose position on the reserve active-status list results from service under a temporary appointment or in a grade held by reason of assignment to a position has, when that appointment or assignment ends, the grade and position on that list that the officer would have held if the officer had not received that appointment or assignment.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2923; amended P.L. 104–106, § 1501(b)(22), Feb. 10, 1996, 110 Stat. 497.)

§ 14004. Reserve active-status lists: eligibility for Reserve promotion

Except as otherwise provided by law, an officer must be on a reserve active-status list to be eligible under chapter 1405 of this title for consideration for selection for promotion or for promotion.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2923.)

§ 14005. Competitive categories

Each officer whose name appears on a reserve active-status list shall be placed in a competitive category. The competitive categories for each armed force shall be specified by the Secretary of the military department concerned under regulations prescribed by the Secretary of Defense. Officers in the same competitive category shall compete among themselves for promotion.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2923.)

§ 14006. Determination of years in grade

For the purpose of chapters 1403 through 1411 of this title, an officer's years of service in a grade are computed from the officer's date of rank in grade as determined under section 741(d) of this title.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2923.)

CHAPTER 1403—SELECTION BOARDS

Sec.
14101. Convening of selection boards.
14102. Selection boards: appointment and composition.
14103. Oath of members.
14104. Confidentiality of board proceedings.
14105. Notice of convening of promotion board.
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14107. Information furnished by the Secretary concerned to promotion boards.
14108. Recommendations by promotion boards.
14109. Reports of promotion boards: in general.
14110. Reports of promotion boards: review by Secretary.
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§ 14101. Convening of selection boards

(a) PROMOTION BOARDS.—(1) Whenever the needs of the Army, Navy, Air Force, or Marine Corps require, the Secretary concerned shall convene a selection board to recommend for promotion to the next higher grade, under chapter 1405 of this title, officers on the reserve active-status list of that armed force in a permanent grade from first lieutenant through brigadier general or, in the case of the Naval Reserve, lieutenant (junior grade) through rear admiral (lower half). A selection board convened under this subsection shall be known as a "promotion board".

(2) A promotion board convened to recommend reserve officers of the Army or reserve officers of the Air Force for promotion (A) to fill a position vacancy under section 14315 of this title, or (B) to the grade of brigadier general or major general, shall be known as a "vacancy promotion board". Any other promotion board convened under this subsection shall be known as a "mandatory promotion board".

(b) CONTINUATION BOARDS.—Whenever the needs of the Army, Navy, Air Force, or Marine Corps require, the Secretary concerned may convene a selection board to recommend officers of that armed force—

(1) for continuation on the reserve active-status list under section 14701 of this title;

(2) for selective early removal from the reserve active-status list under section 14704 of this title; or

(3) for selective early retirement under section 14705 of this title.

A selection board convened under this subsection shall be known as a "continuation board".

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2924; amended P.L. 105–85, § 514(a), Nov. 18, 1997, 111 Stat. 1732.)

§ 14102. Selection boards: appointment and composition

(a) APPOINTMENT.—Members of selection boards convened under section 14101 of this title shall be appointed by the Sec-

retary of the military department concerned in accordance with this section. Promotion boards and special selection boards shall consist of five or more officers. Continuation boards shall consist of three or more officers. All of the officers of any such selection board shall be of the same armed force as the officers under consideration by the board.

(b) COMPOSITION.—At least one-half of the members of such a selection board shall be reserve officers, to include at least one reserve officer from each reserve component from which officers are to be considered by the board. Each member of a selection board must hold a permanent grade higher than the grade of the officers under consideration by the board, and no member of a board may hold a grade below major or lieutenant commander.

(c) REPRESENTATION OF COMPETITIVE CATEGORIES.—(1) Except as provided in paragraph (2), a selection board shall include at least one officer from each competitive category of officers to be considered by the board.

(2) A selection board need not include an officer from a competitive category to be considered by the board if there is no officer of that competitive category on the reserve active-status list or the active-duty list in a permanent grade higher than the grade of the officers to be considered by the board and otherwise eligible to serve on the board. However, in such a case, the Secretary of the military department concerned, in his discretion, may appoint as a member of the board a retired officer of that competitive category who is in the same armed force as the officers under consideration by the board who holds a higher grade than the grade of the officers under consideration.

(d) PROHIBITION OF SERVICE ON CONSECUTIVE PROMOTION BOARDS.—No officer may be a member of two successive promotion boards convened under section 14101(a) of this title for the consideration of officers of the same competitive category and grade if the second of the two boards is to consider any officer who was considered and not recommended for promotion to the next higher grade by the first of the two boards.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2924.)

§ 14103. Oath of members

Each member of a selection board convened under section 14101 of this title shall take an oath to perform the duties of a member of the board without prejudice or partiality, having in view both the special fitness of officers and the efficiency of the member's armed force.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2925.)

§ 14104. Confidentiality of board proceedings

Except as otherwise authorized or required by law, the proceedings of a selection board convened under section 14101 of this title may not be disclosed to any person not a member of the board.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2925.)

§ 14105. Notice of convening of promotion board

(a) REQUIRED NOTICE.—At least 30 days before a promotion board is convened under section 14101(a) of this title to consider

officers in a grade and competitive category for promotion to the next higher grade, the Secretary concerned shall either (1) notify in writing the officers eligible for consideration by the board for promotion regarding the convening of the board, or (2) issue a general written notice to the armed force concerned regarding the convening of the board.

(b) CONTENT OF NOTICE.—A notice under subsection (a) shall include the date on which the board is to convene and (except in the case of a vacancy promotion board) the name and date of rank of the junior officer, and of the senior officer, in the promotion zone as of the date of the notice.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2925.)

§ 14106. Communication with board by officers under consideration

Subject to regulations prescribed by the Secretary of the military department concerned, an officer eligible for consideration by a promotion board convened under section 14101(a) of this title who is in the promotion zone or above the promotion zone, or who is to be considered by a vacancy promotion board, may send a written communication to the board calling attention to any matter concerning the officer which the officer considers important to the officer's case. Any such communication shall be sent so as to arrive not later than the date on which the board convenes. The board shall give consideration to any timely communication under this section.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2925.)

§ 14107. Information furnished by the Secretary concerned to promotion boards

(a) INTEGRITY OF THE PROMOTION SELECTION BOARD PROCESS.—(1) The Secretary of Defense shall prescribe regulations governing information furnished to selection boards convened under section 14101(a) of this title. Those regulations shall apply uniformly among the military departments. Any regulations prescribed by the Secretary of a military department to supplement those regulations may not take effect without the approval of the Secretary of Defense in writing.

(2) No information concerning a particular eligible officer may be furnished to a selection board except for the following:

(A) Information that is in the officer's official military personnel file and that is provided to the selection board in accordance with the regulations prescribed by the Secretary of Defense pursuant to paragraph (1).

(B) Other information that is determined by the Secretary of the military department concerned, after review by that Secretary in accordance with standards and procedures set out in the regulations prescribed by the Secretary of Defense pursuant to paragraph (1), to be substantiated, relevant information that could reasonably and materially affect the deliberations of the promotion board.

(C) Subject to such limitations as may be prescribed in those regulations, information communicated to the board by the officer in accordance with this section, section 14106 of this

title (including any comment on information referred to in subparagraph (A) regarding that officer), or other applicable law.

(D) A factual summary of the information described in subparagraphs (A), (B), and (C) that, in accordance with the regulations prescribed pursuant to paragraph (1) is prepared by administrative personnel for the purpose of facilitating the work of the selection board.

(3) Information provided to a promotion board in accordance with paragraph (2) shall be made available to all members of the board and shall be made a part of the record of the board. Communication of such information shall be in a written form or in the form of an audio or video recording. If a communication is in the form of an audio or video recording, a written transcription of the recording shall also be made a part of the record of the promotion board.

(4) Paragraphs (2) and (3) do not apply to the furnishing of appropriate administrative processing information to the promotion board by an administrative staff designated to assist the board, but only to the extent that oral communications are necessary to facilitate the work of the board.

(5) Information furnished to a promotion board that is described in subparagraph (B), (C), or (D) of paragraph (2) may not be furnished to a later promotion board unless—

(A) the information has been properly placed in the official military personnel file of the officer concerned; or

(B) the information is provided to the later selection board in accordance with paragraph (2).

(6)(A) Before information described in paragraph (2)(B) regarding an eligible officer is furnished to a selection board, the Secretary of the military department concerned shall ensure—

(i) that such information is made available to such officer; and

(ii) that the officer is afforded a reasonable opportunity to submit comments on that information to the promotion board.

(B) If an officer cannot be given access to the information referred to in subparagraph (A) because of its classification status, the officer shall, to the maximum extent practicable, be furnished an appropriate summary of the information.

(b) INFORMATION TO BE FURNISHED.—The Secretary of the military department concerned shall furnish to a promotion board convened under section 14101(a) of this title the following:

(1) In the case of a mandatory promotion board, the maximum number (as determined in accordance with section 14307 of this title) of officers in each competitive category under consideration that the board is authorized to recommend for promotion to the next higher grade.

(2) The name of each officer in each competitive category under consideration who is to be considered by the board for promotion.

(3) The pertinent records (as determined by the Secretary) of each officer whose name is furnished to the board.

(4) Information or guidelines relating to the needs of the armed force concerned for officers having particular skills, including (except in the case of a vacancy promotion board)

guidelines or information relating to either a minimum number or a maximum number of officers with particular skills within a competitive category.

(5) Such other information or guidelines as the Secretary concerned may determine to be necessary to enable the board to perform its functions.

(c) LIMITATION ON MODIFYING FURNISHED INFORMATION.—Information or guidelines furnished to a selection board under subsection (a) may not be modified, withdrawn, or supplemented after the board submits its report to the Secretary of the military department concerned pursuant to section 14109(a) of this title. However, in the case of a report returned to a board pursuant to section 14110(a) of this title for further proceedings because of a determination by the Secretary of the military department concerned that the board acted contrary to law, regulation, or guidelines, the Secretary may modify, withdraw, or supplement such information or guidelines as part of a written explanation to the board as provided in that section.

(d) OFFICERS IN HEALTH-PROFESSIONS COMPETITIVE CATEGORIES.—The Secretary of each military department, under uniform regulations prescribed by the Secretary of Defense, shall include in guidelines furnished to a promotion board convened under section 14101(a) of this title that is considering officers in a health-professions competitive category for promotion to a grade below colonel or, in the case of officers of the Naval Reserve, captain, a direction that the board give consideration to an officer's clinical proficiency and skill as a health professional to at least as great an extent as the board gives to the officer's administrative and management skills.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2926.)

§ 14108. Recommendations by promotion boards

(a) RECOMMENDATION OF BEST QUALIFIED OFFICERS.—A promotion board convened under section 14101(a) of this title shall recommend for promotion to the next higher grade those officers considered by the board whom the board considers best qualified for promotion within each competitive category considered by the board or, in the case of a vacancy promotion board, among those officers considered to fill a vacancy. In determining those officers who are best qualified for promotion, the board shall give due consideration to the needs of the armed force concerned for officers with particular skills (as noted in the guidelines or information furnished the board under section 14107 of this title).

(b) MAJORITY REQUIRED.—A promotion board convened under section 14101(a) of this title may not recommend an officer for promotion unless—

(1) the officer receives the recommendation of a majority of the members of the board; and

(2) a majority of the members of the board finds that the officer is fully qualified for promotion.

(c) BOARD RECOMMENDATION REQUIRED FOR PROMOTION.—Except as otherwise provided by law, an officer on the reserve active-status list may not be promoted to a higher grade under chapter 1405 of this title unless the officer is considered and recommended

for promotion to that grade by a promotion board convened under section 14101(a) of this title (or by a special selection board convened under section 14502 of this title).

(d) DISCLOSURE OF BOARD RECOMMENDATIONS.—The recommendations of a promotion board may be disclosed only in accordance with regulations prescribed by the Secretary of Defense. Those recommendations may not be disclosed to a person not a member of the board (or a member of the administrative staff designated by the Secretary concerned to assist the board) until the written report of the recommendations of the board, required by section 14109 of this title, is signed by each member of the board.

(e) PROHIBITION OF COERCION AND UNAUTHORIZED INFLUENCE OF ACTIONS OF BOARD MEMBERS.—The Secretary convening a promotion board under section 14101(a) of this title, and an officer or other official exercising authority over any member of a selection board, may not—

(1) censure, reprimand, or admonish the selection board or any member of the board with respect to the recommendations of the board or the exercise of any lawful function within the authorized discretion of the board; or

(2) attempt to coerce or, by any unauthorized means, influence any action of a promotion board or any member of a promotion board in the formulation of the board's recommendations.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2928.)

§ 14109. Reports of promotion boards: in general

(a) REPORT OF OFFICERS RECOMMENDED FOR PROMOTION.—Each promotion board convened under section 14101(a) of this title shall submit to the Secretary of the military department concerned a report in writing containing a list of the names of the officers recommended by the board for promotion. The report shall be signed by each member of the board.

(b) CERTIFICATION.—Each report under subsection (a) shall include a certification—

(1) that the board has carefully considered the record of each officer whose name was furnished to the board; and

(2) that, in the case of a promotion board convened under section 14101(a) of this title, in the opinion of a majority of the members of the board, the officers recommended for promotion by the board are best qualified for promotion to meet the needs of the armed force concerned (as noted in the guidelines or information furnished the board under section 14107 of this title) among those officers whose names were furnished to the selection board.

(c) SHOW-CAUSE RECOMMENDATIONS.—(1) A promotion board convened under section 14101(a) of this title shall include in its report to the Secretary concerned the name of any reserve officer before it for consideration for promotion whose record, in the opinion of a majority of the members of the board, indicates that the officer should be required to show cause for retention in an active status.

(2) If such a report names an officer as having a record which indicates that the officer should be required to show cause for retention, the Secretary concerned may provide for the review of

the record of that officer as provided under regulations prescribed under section 14902 of this title.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2928.)

§ 14110. Reports of promotion boards: review by Secretary

(a) REVIEW OF REPORT.—Upon receipt of the report of a promotion board submitted under section 14109(a) of this title, the Secretary of the military department concerned shall review the report to determine whether the board has acted contrary to law or regulation or to guidelines furnished the board under section 14107(a) of this title. Following that review, unless the Secretary concerned makes a determination as described in subsection (b), the Secretary shall submit the report as required by section 14111 of this title.

(b) RETURN OF REPORT FOR FURTHER PROCEEDINGS.—If, on the basis of a review of the report under subsection (a), the Secretary of the military department concerned determines that the board acted contrary to law or regulation or to guidelines furnished the board under section 14107(a) of this title, the Secretary shall return the report, together with a written explanation of the basis for such determination, to the board for further proceedings. Upon receipt of a report returned by the Secretary concerned under this subsection, the selection board (or a subsequent selection board convened under section 14101(a) of this title for the same grade and competitive category) shall conduct such proceedings as may be necessary in order to revise the report to be consistent with law, regulation, and such guidelines and shall resubmit the report, as revised, to the Secretary in accordance with section 14109 of this title.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2929.)

§ 14111. Reports of selection boards: transmittal to President

(a) TRANSMITTAL TO PRESIDENT.—The Secretary concerned, after final review of the report of a selection board under section 14110 of this title, shall submit the report with the Secretary's recommendations, to the Secretary of Defense for transmittal by the Secretary to the President for approval or disapproval. If the authority of the President to approve or disapprove the report of a promotion board is delegated to the Secretary of Defense, that authority may not be redelegated except to an official in the Office of the Secretary of Defense.

(b) REMOVAL OF NAME FROM BOARD REPORT.—The name of an officer recommended for promotion by a selection board may be removed from the report of the selection board only by the President.

(c) RECOMMENDATIONS FOR REMOVAL OF SELECTED OFFICERS FROM REPORT.—If the Secretary of a military department or the Secretary of Defense makes a recommendation under this section that the name of an officer be removed from the report of a promotion board and the recommendation is accompanied by information that was not presented to that promotion board, that information shall be made available to that officer. The officer shall then be afforded a reasonable opportunity to submit comments on that information to the officials making the recommendation and the officials reviewing the recommendation. If an eligible officer

cannot be given access to such information because of its classification status, the officer shall, to the maximum extent practicable, be provided with an appropriate summary of the information.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2929.)

§ 14112. Dissemination of names of officers selected

(a) TIME FOR DISSEMINATION.—The names of the officers recommended for promotion in the report of a selection board shall be disseminated to the armed force concerned as follows:

(1) In the case of officers recommended for promotion to a grade below brigadier general or rear admiral (lower half), such names may be disseminated upon, or at any time after, the transmittal of the report to the President.

(2) In the case of officers recommended for promotion to a grade above colonel or, in the case of the Navy, captain, such names may be disseminated upon, or at any time after, the approval of the report by the President.

(3) In the case of officers whose names have not been sooner disseminated, such names shall be promptly disseminated—

(A) upon confirmation of the promotion of the officers by the Senate (in the case of promotions required to be submitted to the Senate for confirmation); or

(B) upon the approval of the report by the President (in the case of promotions not required to be submitted to the Senate for confirmation).

(b) NAMES NOT DISSEMINATED.—A list of names of officers disseminated under subsection (a) may not include—

(1) any name removed by the President from the report of the selection board containing that name, if dissemination is under the authority of paragraph (2) or (3)(B) of that subsection; or

(2) the name of any officer whose promotion the Senate failed to confirm, if dissemination is under the authority of paragraph (3)(A) of that subsection.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2930; revised in its entirety P.L. 106–398, § 1[503(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–101.)

CHAPTER 1405—PROMOTIONS

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§ 14301. Eligibility for consideration for promotion: general rules

(a) ONE-YEAR RULE.—An officer is eligible under this chapter for consideration for promotion by a promotion board convened under section 14101(a) of this title only if—

(1) the officer is on the reserve active-status list of the Army, Navy, Air Force, or Marine Corps; and

(2) during the one-year period ending on the date of the convening of the promotion board the officer has continuously performed service on either the reserve active-status list or the active-duty list (or on a combination of both lists).

(b) REQUIREMENT FOR CONSIDERATION OF ALL OFFICERS IN AND ABOVE THE ZONE.—Whenever a promotion board (other than a vacancy promotion board) is convened under section 14101(a) of this title for consideration of officers in a competitive category who are eligible under this chapter for consideration for promotion to the next higher grade, each officer in the promotion zone, and each officer above the promotion zone, for that grade and competitive category shall be considered for promotion.

(c) PREVIOUSLY SELECTED OFFICERS NOT ELIGIBLE TO BE CONSIDERED.—A promotion board convened under section 14101(a) of this title may not consider for promotion to the next higher grade any of the following officers:

(1) An officer whose name is on a promotion list for that grade as a result of recommendation for promotion to that grade by an earlier selection board convened under that section or section 14502 of this title or under chapter 36 of this title.

(2) An officer who is recommended for promotion to that grade in the report of an earlier selection board convened under a provision referred to in paragraph (1), in the case of such a report that has not yet been approved by the President.

(3) An officer who has been approved for Federal recognition by a board convened under section 307 of title 32 and nominated by the President for promotion to that grade as a reserve of the Army or of the Air Force as the case may be, if that nomination is pending before the Senate.

(4) An officer who has been nominated by the President for promotion to that grade under any other provision of law, if that nomination is pending before the Senate.

(d) OFFICERS BELOW THE ZONE.—The Secretary of the military department concerned may, by regulation, prescribe procedures to limit the officers to be considered by a selection board from below the promotion zone to those officers who are determined to be exceptionally well qualified for promotion. The regulations shall include criteria for determining which officers below the promotion zone are exceptionally well qualified for promotion.

(e) CERTAIN RESERVE OFFICERS OF THE AIR FORCE.—A reserve officer of the Air Force who (1) is in the Air National Guard of the United States and holds the grade of lieutenant colonel, colonel, or brigadier general, or (2) is in the Air Force Reserve and holds the grade of colonel or brigadier general, is not eligible for consideration for promotion by a mandatory promotion board convened under section 14101(a) of this title.

(f) NONCONSIDERATION OF OFFICERS SCHEDULED FOR REMOVAL FROM RESERVE ACTIVE-STATUS LIST.—The Secretary of the military department concerned may, by regulation, provide for the exclusion from consideration for promotion by a promotion board of any officer otherwise eligible to be considered by the board who has an established date for removal from the reserve active-status list that is not more than 90 days after the date on which the selection board for which the officer would otherwise be eligible is to be convened.

(g) A reserve component brigadier general of the Army or the Air Force who is in an inactive status is eligible (notwithstanding subsection (a)) for consideration for promotion to major general by a promotion board convened under section 14101(a) of this title if the officer—

(1) has been in an inactive status for less than one year as of the date of the convening of the promotion board; and

(2) had continuously served for at least one year on the reserve active status list or the active duty list (or a combination of both) immediately before the officer's most recent transfer to an inactive status.

(h)[1] OFFICERS ON EDUCATIONAL DELAY.—An officer on the reserve active-status list is ineligible for consideration for promotion, but shall remain on the reserve active-status list, while the officer—

(1) is pursuing a program of graduate level education in an educational delay status approved by the Secretary concerned; and

(2) is receiving from the Secretary financial assistance in connection with the pursuit of that program of education while in that status.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2931; amended P.L. 105–85, §§ 503(b), (c), 514(b), Nov. 18, 1997, 111 Stat. 1724, 1732; P.L. 105–261, § 514, Oct. 17, 1998, 112 Stat. 2008; P.L. 106–65, §§ 513(a), 1066(a)(32), Oct. 5, 1999, 113 Stat. 593, 772.)

§ 14302. Promotion zones

(a) PROMOTION ZONES GENERALLY.—For purposes of this chapter, a promotion zone is an eligibility category for the consideration of officers by a mandatory promotion board. A promotion zone consists of those officers on the reserve active-status list who are in the same grade and competitive category and who meet the requirements of both paragraphs (1) and (2) or the requirements of paragraph (3), as follows:

(1)(A) In the case of officers in grades below colonel, for reserve officers of the Army, Air Force, and Marine Corps, or captain, for officers of the Naval Reserve, those who have neither (i) failed of selection for promotion to the next higher grade, nor (ii) been removed from a list of officers recommended for promotion to that grade.

(B) In the case of officers in the grade of colonel or brigadier general, for reserve officers of the Army and Marine Corps, or in the grade of captain or rear admiral (lower half), for reserve officers of the Navy, those who have neither (i) been recommended for promotion to the next higher grade when considered in the promotion zone, nor (ii) been removed from a list of officers recommended for promotion to that grade.

(2) Those officers who are senior to the officer designated by the Secretary of the military department concerned to be the junior officer in the promotion zone eligible for consideration for promotion to the next higher grade and the officer so designated.

(3) Those officers who—

(A) have been selected from below the zone for promotion to the next higher grade or by a vacancy promotion board, but whose names were removed from the list of officers recommended for promotion to that next higher grade resulting from that selection;

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[1] Section 513(b) of the National Defense Authorization Act for Fiscal Year 2000 (P.L. 106–65; 113 Stat. 593) provides:

(b) RETROACTIVE EFFECT.—(1) Subsection (h) of section 14301 of title 10, United States Code (as added by subsection (a)), shall apply with respect to boards convened under section 14101(a) of such title before, on, or after [Oct. 5, 1999].

(2) The Secretary of the military department concerned, upon receipt of request submitted in a form and manner prescribed by the Secretary, shall expunge from the military records of an officer any indication of a failure of selection of the officer for promotion by a board referred to in paragraph (1) while the officer was ineligible for consideration by that board by reason of section 14301(h) of title 10, United States Code.

(B) have not failed of selection for promotion to that next higher grade; and

(C) are senior to the officer designated by the Secretary of the military department concerned to be the junior officer in the promotion zone eligible for consideration for promotion to that next higher grade and the officer so designated.

(b) OFFICERS ABOVE THE ZONE.—Officers on the reserve active-status list are considered to be above the promotion zone for a grade and competitive category if they—

(1) are eligible for consideration for promotion to the next higher grade;

(2) are in the same grade as those officers in the promotion zone for that competitive category; and

(3) are senior to the senior officer in the promotion zone for that competitive category.

(c) OFFICERS BELOW THE ZONE.—Officers on the reserve active-status list are considered to be below the promotion zone for a grade and competitive category if they—

(1) are eligible for consideration for promotion to the next higher grade;

(2) are in the same grade as those officers in the promotion zone for that competitive category; and

(3) are junior to the junior officer in the promotion zone for that competitive category.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2932.)

§ 14303. Eligibility for consideration for promotion: minimum years of service in grade

(a) OFFICERS IN PAY GRADES O–1 AND O–2.—An officer who is on the reserve active-status list of the Army, Navy, Air Force, or Marine Corps and holds a permanent appointment in the grade of second lieutenant or first lieutenant as a reserve officer of the Army, Air Force, or Marine Corps, or in the grade of ensign or lieutenant (junior grade) as a reserve officer of the Navy, may not be promoted to the next higher grade, or granted Federal recognition in that grade, until the officer has completed the following years of service in grade:

(1) Eighteen months, in the case of an officer holding a permanent appointment in the grade of second lieutenant or ensign.

(2) Two years, in the case of an officer holding a permanent appointment in the grade of first lieutenant or lieutenant (junior grade).

(b) OFFICERS IN PAY GRADES O–3 AND ABOVE.—Subject to subsection (d), an officer who is on the reserve active-status list of the Army, Air Force, or Marine Corps and holds a permanent appointment in a grade above first lieutenant, or who is on the reserve active-status list of the Navy in a grade above lieutenant (junior grade), may not be considered for selection for promotion to the next higher grade, or examined for Federal recognition in the next higher grade, until the officer has completed the following years of service in grade:

(1) Three years, in the case of an officer of the Army, Air Force, or Marine Corps holding a permanent appointment in the grade of captain, major, or lieutenant colonel or in the case of a reserve officer of the Navy holding a permanent appointment in the grade of lieutenant, lieutenant commander, or commander.

(2) One year, in the case of an officer of the Army, Air Force, or Marine Corps holding a permanent appointment in the grade of colonel or brigadier general or in the case of a reserve officer of the Navy holding a permanent appointment in the grade of captain or rear admiral (lower half).

This subsection does not apply to an adjutant general or assistant adjutant general of a State or to an appointment in a higher grade which is based upon a specific provision of law.

(c) AUTHORITY TO LENGTHEN MINIMUM PERIOD IN GRADE.—The Secretary concerned may prescribe a period of service in grade for eligibility for promotion, in the case of officers to whom subsection (a) applies, or for eligibility for consideration for promotion, in the case of officers to whom subsection (b) applies, that is longer than the applicable period specified in that subsection.

(d) WAIVERS TO ENSURE TWO BELOW-THE-ZONE CONSIDERATIONS.—Subject to section 14307(b) of this title, the Secretary of the military department concerned may waive subsection (b) to the extent necessary to ensure that officers described in paragraph (1) of that subsection have at least two opportunities for consideration for promotion to the next higher grade as officers below the promotion zone.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2933.)

§ 14304. Eligibility for consideration for promotion: maximum years of service in grade

(a) CONSIDERATION FOR PROMOTION WITHIN SPECIFIED TIMES.—(1) Officers described in paragraph (3) shall be placed in the promotion zone for that officer's grade and competitive category, and shall be considered for promotion to the next higher grade by a promotion board convened under section 14101(a) of this title, far enough in advance of completing the years of service in grade specified in the following table so that, if the officer is recommended for promotion, the promotion may be effective on or before the date on which the officer will complete those years of service.

Current Grade	Maximum years of service in grade
First lieutenant or Lieutenant (junior grade)	5 years
Captain or Navy Lieutenant	7 years
Major or Lieutenant commander	7 years

(2) Paragraph (1) is subject to subsections (a), (b), and (c) of section 14301 of this title and applies without regard to vacancies.

(3) Paragraph (1) applies to an officer who is on the reserve active-status list of the Army, Navy, Air Force, or Marine Corps and who holds a permanent appointment in the grade of first lieutenant, captain, or major as a reserve of the Army, Air Force, or Marine Corps, or to an officer on the reserve active-status list of the Navy in the grade of lieutenant (junior grade), lieutenant, or lieu-

tenant commander as a reserve of the Navy, and who, while holding that appointment, has not been considered by a selection board convened under section 14101(a) or 14502 of this title for promotion to the next higher grade.

(b) PROMOTION DATE.—An officer holding a permanent grade specified in the table in subsection (a) who is recommended for promotion to the next higher grade by a selection board the first time the officer is considered for promotion while in or above the promotion zone and who is placed on an approved promotion list established under section 14308(a) of this title shall (if not promoted sooner or removed from that list by the President or by reason of declination) be promoted, without regard to the existence of a vacancy, on the date on which the officer completes the maximum years of service in grade specified in subsection (a). The preceding sentence is subject to the limitations of section 12011 of this title.

(c) WAIVER AUTHORITY FOR NAVY AND MARINE CORPS RUNNING MATE SYSTEM.—If the Secretary of the Navy establishes promotion zones for officers on the reserve active-status list of the Navy or the Marine Corps Reserve in accordance with a running mate system under section 14306 of this title, the Secretary may waive the requirements of subsection (a) to the extent the Secretary considers necessary in any case in which the years of service for promotion, or for consideration for promotion, within those zones will exceed the maximum years of service in grade specified in subsection (a).

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2934.)

§ 14305. Establishment of promotion zones: mandatory consideration for promotion

(a) ESTABLISHMENT OF ZONE.—Before convening a mandatory promotion board under section 14101(a) of this title, the Secretary of the military department concerned shall establish a promotion zone for officers serving in each grade and competitive category to be considered by the board.

(b) NUMBER IN THE ZONE.—The Secretary concerned shall determine the number of officers in the promotion zone for officers serving in any grade and competitive category from among officers who are eligible for promotion in that grade and competitive category under the provisions of sections 14303 and 14304 of this title and who are otherwise eligible for promotion.

(c) FACTORS IN DETERMINING NUMBER IN THE ZONE.—The Secretary's determination under subsection (b) shall be made on the basis of an estimate of the following:

(1) The number of officers needed in that competitive category in the next higher grade in each of the next five years.

(2) In the case of a promotion zone for officers to be promoted to a grade to which the maximum years of in grade criteria established in section 14304 of this title apply, the number of officers in that competitive category who are required to be considered for selection for promotion to the next higher grade under that section.

(3) The number of officers that should be placed in the promotion zone in each of the next five years to provide to officers in those years relatively similar opportunities for promotion.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2935.)

§ 14306. Establishment of promotion zones: Naval Reserve and Marine Corps Reserve running mate system

(a) AUTHORITY OF SECRETARY OF THE NAVY.—The Secretary of the Navy may by regulation implement section 14305 of this title by requiring that the promotion zone for consideration of officers on the reserve active-status list of the Navy or the Marine Corps for promotion to the next higher grade be determined in accordance with a running mate system as provided in subsection (b).

(b) ASSIGNMENT OF RUNNING MATES.—An officer to whom a running mate system applies shall be assigned as a running mate an officer of the same grade on the active-duty list of the same armed force. The officer on the reserve active-status list is in the promotion zone and is eligible for consideration for promotion to the next higher grade by a selection board convened under section 14101(a) of this title when that officer's running mate is in or above the promotion zone established for that officer's grade under chapter 36 of this title.

(c) CONSIDERATION OF OFFICERS BELOW THE ZONE UNDER A RUNNING MATE SYSTEM.—If the Secretary of the Navy authorizes the selection of officers for promotion from below the promotion zone in accordance with section 14307 of this title, the number of officers to be considered from below the zone may be established through the application of the running mate system or otherwise as the Secretary determines to be appropriate to meet the needs of the Navy or Marine Corps.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2935.)

§ 14307. Number of officers to be recommended for promotion

(a) DETERMINATION OF MAXIMUM NUMBER.—Before convening a promotion board under section 14101(a) of this title for a grade and competitive category (other than a vacancy promotion board), the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense, shall determine the maximum number of officers in that grade and competitive category that the board may recommend for promotion. The Secretary shall make the determination under the preceding sentence of the maximum number that may be recommended with a view to having on the reserve active-status list a sufficient number of officers in each grade and competitive category to meet the needs of the armed force concerned for officers on that list. In order to make that determination, the Secretary shall determine (1) the number of positions needed to accomplish mission objectives which require officers of such competitive category in the grade to which the board will recommend officers for promotion, (2) the estimated number of officers needed to fill vacancies in such positions during the period in which it is anticipated that officers selected for promotion will be promoted, (3) the number of officers authorized by the Secretary of the military department concerned to serve on the reserve active-status list in the grade and competitive category under consideration, and (4) any statutory limitation on the number of officers in any grade or category (or combination thereof) authorized to be on the reserve active-status list.

(b) BELOW-THE-ZONE SELECTIONS.—(1) The Secretary of the military department concerned may, when the needs of the armed force concerned require, authorize the consideration of officers in the grade of captain, major, or lieutenant colonel on the reserve active-status list of the Army or Air Force, in a grade above first lieutenant on the reserve active-status list of the Marine Corps, or in a grade above lieutenant (junior grade) on the reserve active-status list of the Navy, for promotion to the next higher grade from below the promotion zone.

(2) When selection from below the promotion zone is authorized, the Secretary shall establish the number of officers that may be recommended for promotion from below the promotion zone in each competitive category to be considered. That number may not exceed the number equal to 10 percent of the maximum number of officers that the board is authorized to recommend for promotion in such competitive category, except that the Secretary of Defense may authorize a greater number, not to exceed 15 percent of the total number of officers that the board is authorized to recommend for promotion, if the Secretary of Defense determines that the needs of the armed force concerned so require. If the maximum number determined under this paragraph is less than one, the board may recommend one officer for promotion from below the promotion zone.

(3) The number of officers recommended for promotion from below the promotion zone does not increase the maximum number of officers that the board is authorized to recommend for promotion under subsection (a).

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2936.)

§ 14308. Promotions: how made

(a) PROMOTION LIST.—When the report of a selection board convened under section 14101(a) or 14502 of this title is approved by the President, the Secretary of the military department concerned shall place the names of all officers selected for promotion within a competitive category on a single list for that competitive category, to be known as a promotion list, in the order of seniority of those officers on the reserve active-status list.

(b) PROMOTION; HOW MADE; ORDER.—(1) Officers on a promotion list for a competitive category shall be promoted in the manner specified in section 12203 of this title.

(2) Officers on a promotion list for a competitive category shall be promoted to the next higher grade in accordance with regulations prescribed by the Secretary of the military department concerned. Except as provided in section 14311, 14312, or 14502(e) of this title or in subsection (d) or (e), promotions shall be made in the order in which the names of officers appear on the promotion list and after officers previously selected for promotion in that competitive category have been promoted.

(3) Officers to be promoted to the grade of first lieutenant or lieutenant (junior grade) shall be promoted in accordance with regulations prescribed by the Secretary of the military department concerned.

(c) DATE OF RANK.—(1) The date of rank of an officer appointed to a higher grade under this section is determined under section 741(d)(2) of this title.

(2) Except as specifically authorized by law, a reserve officer is not entitled to additional pay or allowances if the effective date of the officer's promotion is adjusted to reflect a date earlier than the actual date of the officer's promotion.

(d) OFFICERS WITH RUNNING MATES.—An officer to whom a running mate system applies under section 14306 of this title and who is selected for promotion is eligible for promotion to the grade for which selected when the officer who is that officer's running mate becomes eligible for promotion under chapter 36 of this title. The effective date of the promotion of that officer shall be the same as that of the officer's running mate in the grade to which the running mate is promoted.

(e) ARMY RESERVE AND AIR FORCE RESERVE PROMOTIONS TO FILL VACANCIES.—Subject to this section and to section 14311(e) of this title, and under regulations prescribed by the Secretary of the military department concerned—

(1) an officer in the Army Reserve or the Air Force Reserve who is on a promotion list as a result of selection for promotion by a mandatory promotion board convened under section 14101(a) of this title or a board convened under section 14502 or chapter 36 of this title may be promoted at any time to fill a vacancy in a position to which the officer is assigned; and

(2) an officer in a grade below colonel in the Army Reserve or the Air Force Reserve who is on a promotion list as a result of selection for promotion by a vacancy promotion board convened under section 14101(a) of this title may be promoted at any time to fill the vacancy for which the officer was selected.

(f) EFFECTIVE DATE OF PROMOTION AFTER FEDERAL RECOGNITION.—The effective date of a promotion of a reserve commissioned officer of the Army or the Air Force who is extended Federal recognition in the next higher grade in the Army National Guard or the Air National Guard under section 307 or 310 of title 32 shall be the date on which such Federal recognition in that grade is so extended.

(g) ARMY AND AIR FORCE GENERAL OFFICER PROMOTIONS.—A reserve officer of the Army or the Air Force who is on a promotion list for promotion to the grade of brigadier general or major general as a result of selection by a vacancy promotion board may be promoted to that grade only to fill a vacancy in the Army Reserve or the Air Force Reserve, as the case may be, in that grade.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2937; amended P.L. 105–85, § 514(c), Nov. 18, 1997, 111 Stat. 1732.)

§ 14309. Acceptance of promotion; oath of office

(a) ACCEPTANCE.—An officer who is appointed to a higher grade under this chapter shall be considered to have accepted the appointment on the date on which the appointment is made unless the officer expressly declines the appointment or is granted a delay of promotion under section 14312 of this title.

(b) OATH.—An officer who has served continuously since taking the oath of office prescribed in section 3331 of title 5 is not re-

quired to take a new oath upon appointment to a higher grade under this chapter.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2938.)

§ 14310. Removal of officers from a list of officers recommended for promotion

(a) REMOVAL BY PRESIDENT.—The President may remove the name of any officer from a promotion list at any time before the date on which the officer is promoted.

(b) REMOVAL FOR WITHHOLDING OF SENATE ADVICE AND CONSENT.—If the Senate does not give its advice and consent to the appointment to the next higher grade of an officer whose name is on a list of officers approved by the President for promotion (except in the case of promotions to a reserve grade to which appointments may be made by the President alone), the name of that officer shall be removed from the list.

(c) CONTINUED ELIGIBILITY FOR PROMOTION.—An officer whose name is removed from a list under subsection (a) or (b) continues to be eligible for consideration for promotion. If that officer is recommended for promotion by the next selection board convened for that officer's grade and competitive category and the officer is promoted, the Secretary of the military department concerned may, upon the promotion, grant the officer the same date of rank, the same effective date for the pay and allowances of the grade to which promoted, and the same position on the reserve active-status list, as the officer would have had if the officer's name had not been removed from the list.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2938.)

§ 14311. Delay of promotion: involuntary

(a) DELAY DURING INVESTIGATIONS AND PROCEEDINGS.—(1) Under regulations prescribed by the Secretary of the military department concerned, the appointment of an officer to a higher grade may be delayed if any of the following applies before the date on which the appointment would otherwise be made:

(A) Sworn charges against the officer have been received by an officer exercising general court-martial jurisdiction over the officer and the charges have not been disposed of.

(B) An investigation is being conducted to determine whether disciplinary action of any kind should be brought against the officer.

(C) A board of officers has been convened under section 14903 of this title to review the record of the officer.

(D) A criminal proceeding in a Federal or State court of competent jurisdiction is pending against the officer.

(2) If disciplinary action is not taken against the officer, if the charges against the officer are withdrawn or dismissed, if the officer is not separated by the Secretary of the military department concerned as the result of having been required to show cause for retention, or if the officer is acquitted of the charges, as the case may be, then (unless action to delay the officer's appointment to the higher grade has been taken under subsection (b)) the officer shall be retained on the promotion list, list of officers found qualified for Federal recognition, or list of officers nominated by the

President to the Senate for appointment in a higher reserve grade and shall, upon promotion to the next higher grade, have the same date of rank, the same effective date for the pay and allowances of the grade to which promoted, and the same position on the reserve active-status list as the officer would have had if no delay had intervened, unless the Secretary concerned determines that the officer was unqualified for promotion for any part of the delay. If the Secretary makes such a determination, the Secretary may adjust such date of rank, effective date of pay and allowances, and position on the reserve active-status list as the Secretary considers appropriate under the circumstances.

(b) DELAY FOR LACK OF QUALIFICATIONS.—Under regulations prescribed by the Secretary of the military department concerned, the appointment of an officer to a higher grade may also be delayed if there is cause to believe that the officer is mentally, physically, morally, or professionally unqualified to perform the duties of the grade to which selected. If the Secretary concerned later determines that the officer is qualified for promotion to the higher grade, the officer shall be retained on the promotion list, the list of officers found qualified for Federal recognition, or list of officers nominated by the President to the Senate for appointment in a higher reserve grade, and shall, upon promotion to that grade, have the same date of rank, the same effective date for pay and allowances of that grade, and the same position on the reserve active-status list as the officer would have had if no delay had intervened, unless the Secretary concerned determines that the officer was unqualified for promotion for any part of the delay. If the Secretary makes such a determination, the Secretary may adjust such date of rank, effective date of pay and allowances, and position on the reserve active-status list as the Secretary considers appropriate under the circumstances.

(c) NOTICE TO OFFICER.—(1) The appointment of an officer to a higher grade may not be delayed under subsection (a) or (b) unless the officer is given written notice of the grounds for the delay. The preceding sentence does not apply if it is impracticable to give the officer written notice before the date on which the appointment to the higher grade would otherwise take effect, but in such a case the written notice shall be given as soon as practicable.

(2) An officer whose promotion is delayed under subsection (a) or (b) shall be given an opportunity to make a written statement to the Secretary of the military department concerned in response to the action taken. The Secretary shall give consideration to any such statement.

(d) MAXIMUM LENGTH OF DELAY IN PROMOTION.—The appointment of an officer to a higher grade may not be delayed under subsection (a) or (b) for more than six months after the date on which the officer would otherwise have been promoted unless the Secretary concerned specifies a further period of delay. An officer's appointment may not be delayed more than 90 days after final action has been taken in any criminal case against the officer in a Federal or State court of competent jurisdiction or more than 90 days after final action has been taken in any court-martial case against the officer. Except for court action, a promotion may not be

delayed more than 18 months after the date on which the officer would otherwise have been promoted.

(e) DELAY BECAUSE OF LIMITATIONS ON OFFICER STRENGTH IN GRADE OR DUTIES TO WHICH ASSIGNED.—(1) Under regulations prescribed by the Secretary of Defense, the promotion of a reserve officer on the reserve active-status list who is serving on active duty, or who is on full-time National Guard duty for administration of the reserves or the National Guard, to a grade to which the strength limitations of section 12011 of this title apply shall be delayed if necessary to ensure compliance with those strength limitations. The delay shall expire when the Secretary determines that the delay is no longer required to ensure such compliance.

(2) The promotion of an officer described in paragraph (1) shall also be delayed while the officer is on duty described in that paragraph unless the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense, determines that the duty assignment of the officer requires a higher grade than the grade currently held by the officer.

(3) The date of rank and position on the reserve active-status list of a reserve officer whose promotion to or Federal recognition in the next higher grade was delayed under paragraph (1) or (2) solely as the result of the limitations imposed under the regulations prescribed by the Secretary of Defense or contained in section 12011 of this title shall be the date on which the officer would have been promoted to or recognized in the higher grade had such limitations not existed.

(4) If an officer whose promotion is delayed under paragraph (1) or (2) completes the period of active duty or full-time National Guard duty that the officer is required by law or regulation to perform as a member of a reserve component, the officer may request release from active duty or full-time National Guard duty. If the request is granted, the officer's promotion shall be effective upon the officer's release from such duty. The date of rank and position on the reserve active-status list of the officer shall be the date the officer would have been promoted to or recognized in the higher grade had the limitations imposed under regulations prescribed by the Secretary of Defense contained in section 12011 of this title not existed. If an officer whose promotion is delayed under paragraph (1) or (2) has not completed the period of active duty or full-time National Guard duty that the officer is required by law or regulation to perform as a member of a reserve component, the officer may be retained on active duty or on full-time National Guard duty in the grade in which the officer was serving before the officer's being found qualified for Federal recognition or the officer's selection for the promotion until the officer completes that required period of duty.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2939.)

§ 14312. Delay of promotion: voluntary

(a) AUTHORITY FOR VOLUNTARY DELAYS.—(1) The Secretary of the military department concerned may, by regulation, permit delays of a promotion of an officer who is recommended for promotion by a mandatory selection board convened under section 14101(a) or a special selection board convened under section 14502

of this title at the request of the officer concerned. Such delays, in the case of any promotion, may extend for any period not to exceed three years from the date on which the officer would otherwise be promoted.

(2) Regulations under this section shall provide that—

(A) a request for such a delay of promotion must be submitted by the officer concerned before the delay may be approved; and

(B) denial of such a request shall not be considered to be a failure of selection for promotion unless the officer declines to accept a promotion under circumstances set forth in subsection (c).

(b) EFFECT OF APPROVAL OF REQUEST.—If a request for delay of a promotion under subsection (a) is approved, the officer's name shall remain on the promotion list during the authorized period of delay (unless removed under any other provision of law). Upon the end of the period of the authorized delay, or at any time during such period, the officer may accept the promotion, which shall be effective on the date of acceptance. Such an acceptance of a promotion shall be made in accordance with regulations prescribed under this section.

(c) EFFECT OF DECLINING A PROMOTION.—An officer's name shall be removed from the promotion list and, if the officer is serving in a grade below colonel or, in the case of the Navy, captain, the officer shall be considered to have failed of selection for promotion if any of the following applies:

(1) The Secretary concerned has not authorized voluntary delays of promotion under subsection (a) to the grade concerned and the officer declines to accept an appointment to a higher grade.

(2) The Secretary concerned has authorized voluntary delays of promotion under subsection (a), but has denied the request of the officer for a delay of promotion and the officer then declines to accept an appointment to a higher grade.

(3) The Secretary concerned has approved the request of an officer for a delay of promotion and, upon the end of the period of delay authorized in accordance with regulations prescribed under subsection (a), the officer then declines to accept an appointment to a higher grade.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2941.)

§ 14313. Authority to vacate promotions to grade of brigadier general or rear admiral (lower half)

(a) AUTHORITY.—The President may vacate the appointment of a reserve officer to the grade of brigadier general or rear admiral (lower half) if the period of time during which the officer has served in that grade after promotion to that grade is less than 18 months.

(b) EFFECT OF PROMOTION BEING VACATED.—Except as provided in subsection (c), an officer whose promotion to the grade of brigadier general is vacated under this section holds the grade of colonel as a reserve of the armed force of which the officer is a member. An officer whose promotion to the grade of rear admiral (lower half) is vacated under this section holds the grade of captain

in the Naval Reserve. Upon assuming the lower grade, the officer shall have the same position on the reserve active-status list as the officer would have had if the officer had not served in the higher grade.

(c) SPECIAL RULE FOR OFFICERS SERVING AS ADJUTANT GENERAL.—In the case of an officer serving as an adjutant general or assistant adjutant general whose promotion to the grade of brigadier general is vacated under this section, the officer then holds the reserve grade held by that officer immediately before the officer's appointment as adjutant general or assistant adjutant general.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2942.)

§ 14314. Army and Air Force commissioned officers: generals ceasing to occupy positions commensurate with grade; State adjutants general

(a) GENERAL OFFICERS.—Within 30 days after a reserve officer of the Army or the Air Force on the reserve active-status list in a general officer grade ceases to occupy a position commensurate with that grade (or commensurate with a higher grade), the Secretary concerned shall transfer or discharge the officer in accordance with whichever of the following the officer elects:

(1) Transfer the officer in grade to the Retired Reserve, if the officer is qualified and applies for the transfer.

(2) Transfer the officer in grade to the inactive status list of the Standby Reserve, if the officer is qualified.

(3) Discharge the officer from the officer's reserve appointment and, if the officer is qualified and applies therefor, appoint the officer in the reserve grade held by the officer as a reserve officer before the officer's appointment in a general officer grade.

(4) Discharge the officer from the officer's reserve appointment.

(b) ADJUTANTS GENERAL.—If a reserve officer who is federally recognized in the Army National Guard or the Air National Guard solely because of the officer's appointment as adjutant general or assistant adjutant general of a State ceases to occupy that position, the Secretary concerned, not later than 30 days after the date on which the officer ceases to occupy that position, shall—

(1) withdraw that officer's Federal recognition; and

(2) require that the officer—

(A) be transferred in grade to the Retired Reserve, if the officer is qualified and applies for the transfer;

(B) be discharged from the officer's reserve appointment and appointed in the reserve grade held by the officer as a reserve officer immediately before the appointment of that officer as adjutant general or assistant adjutant general, if the officer is qualified and applies for that appointment; or

(C) be discharged from the officer's reserve appointment.

(c) CREDIT FOR SERVICE IN GRADE.—An officer who is appointed under subsection (a)(3) or (b)(2)(B) shall be credited with an amount of service in the grade in which appointed that is equal

to the amount of prior service in an active status in that grade and in any higher grade.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2942; amended P.L. 104–201, § 544(c), Sept. 23, 1996, 110 Stat. 2523.)

§ 14315. Position vacancy promotions: Army and Air Force officers

(a) OFFICERS ELIGIBLE FOR CONSIDERATION FOR VACANCY PROMOTIONS BELOW BRIGADIER GENERAL.—A reserve officer of the Army who is in the Army Reserve, or a reserve officer of the Air Force who is in the Air Force Reserve, who is on the reserve active-status list in the grade of first lieutenant, captain, major, or lieutenant colonel is eligible for consideration for promotion to the next higher grade under this section if each of the following applies:

(1) The officer is occupying or, as determined by the Secretary concerned, is available to occupy a position in the same competitive category as the officer and for which a grade higher than the one held by that officer is authorized.

(2) The officer is fully qualified to meet all requirements for the position as established by the Secretary of the military department concerned.

(3) The officer has held the officer's present grade for the minimum period of service prescribed in section 14303 of this title for eligibility for consideration for promotion to the higher grade.

(b) CONSIDERATION FOR VACANCY PROMOTION TO BRIGADIER GENERAL OR MAJOR GENERAL.—(1) A reserve officer of the Army who is in the Army Reserve and on the reserve active-status list in the grade of colonel or brigadier general may be considered for promotion to the next higher grade under this section if the officer (A) is assigned to the duties of a general officer of the next higher reserve grade in the Army Reserve or is recommended for such an assignment under regulations prescribed by the Secretary of the Army, (B) has held the officer's present grade for the minimum period of service prescribed in section 14303 of this title for eligibility for consideration for promotion to the higher grade, and (C) meets the standards for consideration prescribed by the Secretary of the Army.

(2) A reserve officer of the Air Force who is in the Air Force Reserve and on the reserve active-status list in the grade of colonel or brigadier general may be considered for promotion to the next higher grade under this section if the officer (A) is assigned to the duties of a general officer of the next higher reserve grade or is recommended for such an assignment under regulations prescribed by the Secretary of the Air Force, and (B) meets the standards for consideration prescribed by the Secretary of the Air Force.

(c) VACANCY PROMOTION BOARDS.—Consideration for promotion under this section shall be by a vacancy promotion board convened under section 14101(a) of this title.

(d) EFFECT OF NONSELECTION.—An officer who is considered for promotion under this section and is not selected shall not be considered to have failed of selection for promotion.

(e) SPECIAL RULE FOR OFFICERS FAILED OF SELECTION.—A reserve officer of the Army or the Air Force who is considered as

failed of selection for promotion under section 14501 of this title to a grade may be considered for promotion under this section or, if selected, promoted to that grade only if the Secretary of the military department concerned finds that the officer is the only qualified officer available to fill the vacancy. The Secretary concerned may not delegate the authority under the preceding sentence.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2943; amended P.L. 104–106, § 1501(b)(25), Feb. 10, 1996, 110 Stat. 497; P.L. 105–85, § 514(d), Nov. 18, 1997, 111 Stat. 1732; P.L. 106–398, § 1[501], Oct. 30, 2000, 114 Stat. 1654, 1654A–98.)

§ 14316. Army National Guard and Air National Guard: appointment to and Federal recognition in a higher reserve grade after selection for promotion

(a) OPPORTUNITY FOR PROMOTION TO FILL A VACANCY IN THE GUARD.—If an officer of the Army National Guard of the United States or the Air National Guard of the United States is recommended by a mandatory selection board convened under section 14101(a) or a special selection board convened under section 14502 of this title for promotion to the next higher grade, an opportunity shall be given to the appropriate authority of the State to promote that officer to fill a vacancy in the Army National Guard or the Air National Guard of that jurisdiction.

(b) AUTOMATIC FEDERAL RECOGNITION.—An officer of the Army National Guard of the United States or the Air National Guard of the United States who is on a promotion list for promotion to the next higher grade as a result of selection for promotion as described in subsection (a) and who before the date of promotion is appointed in that higher grade to fill a vacancy in the Army National Guard or Air National Guard shall—

(1) be extended Federal recognition in that grade, without the examination prescribed in section 307 of title 32; and

(2) subject to section 14311(e) of this title, be promoted to that reserve grade effective on the date of the officer's appointment in that grade in the Army National Guard or Air National Guard.

(c) NATIONAL GUARD OFFICERS FAILED OF SELECTION.—An officer who is considered as failed of selection for promotion under section 14501 of this title to a grade may be extended Federal recognition in that grade only if the Secretary of the military department concerned finds that the officer is the only qualified officer available to fill a vacancy. The Secretary concerned may not delegate the authority under the preceding sentence.

(d) TRANSFER TO ARMY RESERVE OR AIR FORCE RESERVE.—If, on the date on which an officer of the Army National Guard of the United States or of the Air National Guard of the United States who is on a promotion list as described in subsection (a) is to be promoted, the officer has not been promoted to fill a vacancy in the higher grade in the Army National Guard or the Air National Guard, the officer's Federal recognition in the officer's reserve grade shall be withdrawn and the officer shall be promoted and transferred to the Army Reserve or the Air Force Reserve as appropriate.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2944.)

§ 14317. Officers in transition to and from the active-status list or active-duty list

(a) EFFECT OF TRANSFER TO INACTIVE STATUS OR RETIRED STATUS.—If a reserve officer on the reserve active-status list is transferred to an inactive status or to a retired status after having been recommended for promotion to a higher grade under this chapter or chapter 36 of this title, or after having been found qualified for Federal recognition in the higher grade under title 32, but before being promoted, the officer—

(1) shall be treated as if the officer had not been considered and recommended for promotion by the selection board or examined and been found qualified for Federal recognition; and

(2) may not be placed on a promotion list or promoted to the higher grade after returning to an active status,

unless the officer is again recommended for promotion by a selection board convened under chapter 36 of this title or section 14101(a) or 14502 of this title or examined for Federal recognition under title 32.

(b) EFFECT OF PLACEMENT ON ACTIVE-DUTY LIST.—A reserve officer who is on a promotion list as a result of selection for promotion by a mandatory promotion board convened under section 14101(a) or a special selection board convened under section 14502 of this title and who before being promoted is placed on the active-duty list of the same armed force and placed in the same competitive category shall, under regulations prescribed by the Secretary of Defense, be placed on an appropriate promotion list for officers on the active-duty list established under chapter 36 of this title.

(c) OFFICERS ON A PROMOTION LIST REMOVED FROM ACTIVE-DUTY LIST.—An officer who is on the active-duty list and is on a promotion list as the result of selection for promotion by a selection board convened under chapter 36 of this title and who before being promoted is removed from the active-duty list and placed on the reserve active-status list of the same armed force and in the same competitive category (including a regular officer who on removal from the active-duty list is appointed as a reserve officer and placed on the reserve active-status list) shall, under regulations prescribed by the Secretary of Defense, be placed on an appropriate promotion list established under this chapter.

(d) OFFICERS SELECTED FOR POSITION VACANCIES.—If a reserve officer is ordered to active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only) after being recommended for promotion under section 14315 of this title to fill a position vacancy or examined for Federal recognition under title 32, and before being promoted to fill that vacancy, the officer shall not be promoted while serving such active duty or full-time National Guard duty unless the officer is ordered to active duty as a member of the unit in which the vacancy exists when that unit is ordered to active duty. If, under this subsection, the name of an officer is removed from a list of officers recommended for promotion, the officer shall be treated as if the officer had not been considered for promotion or examined for Federal recognition.

(e) OFFICERS ORDERED TO ACTIVE DUTY IN TIME OF WAR OR NATIONAL EMERGENCY.—Under regulations prescribed by the Secretary of the military department concerned, a reserve officer who is not on the active-duty list and who is ordered to active duty in time of war or national emergency may, if eligible, be considered for promotion by a mandatory promotion board convened under section 14101(a) or a special selection board convened under section 14502 of this title for not more than two years from the date the officer is ordered to active duty unless the President suspends the operation of this section under the provisions of section 123 or 10213 of this title.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2945; amended P.L. 104–106, § 1501(b)(26), Feb. 10, 1996, 110 Stat. 497; P.L. 105–85, § 1073(a)(68), Nov. 18, 1997, 111 Stat. 1904.)

CHAPTER 1407—FAILURE OF SELECTION FOR PROMOTION AND INVOLUNTARY SEPARATION

Sec.
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14515. Discharge or retirement for age.
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14518. Continuation of officers to complete disciplinary action.

§ 14501. Failure of selection for promotion

(a) OFFICERS BELOW THE GRADE OF COLONEL OR NAVY CAPTAIN.—An officer on the reserve active-status list in a grade below the grade of colonel or, in the case of an officer in the Naval Reserve, captain who is in or above the promotion zone established for that officer's grade and competitive category and who (1) is considered but not recommended for promotion (other than by a vacancy promotion board), or (2) declines to accept a promotion for which selected (other than by a vacancy promotion board), shall be considered to have failed of selection for promotion.

(b) OFFICERS TWICE FAILED OF SELECTION.—An officer shall be considered for all purposes to have twice failed of selection for promotion if any of the following applies:

(1) The officer is considered but not recommended for promotion a second time by a mandatory promotion board convened under section 14101(a) or a special selection board convened under section 14502(a) of this title.

(2) The officer declines to accept a promotion for which recommended by a mandatory promotion board convened under section 14101(a) or a special selection board convened under section 14502(a) or 14502(b) of this title after previously failing of selection or after the officer's name was removed from the report of a selection board under section 14111(b) or from a promotion list under section 14310 of this title after recommendation for promotion by an earlier selection board described in subsection (a).

(3) The officer's name has been removed from the report of a selection board under section 14111(b) or from a promotion list under section 14310 of this title after recommendation by a mandatory promotion board convened under section 14101(a) or by a special selection board convened under section 14502(a) or 14502(b) of this title and—

(A) the officer is not recommended for promotion by the next mandatory promotion board convened under section 14101(a) or special selection board convened under section 14502(a) of this title for that officer's grade and competitive category; or

(B) the officer's name is again removed from the report of a selection board under section 14111(b) or from a promotion list under section 14310 of this title.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2946; amended P.L. 104–106, § 1501(b)(28), Feb. 10, 1996, 110 Stat. 498.)

§ 14502. Special selection boards: correction of errors

(a) OFFICERS NOT CONSIDERED BECAUSE OF ADMINISTRATIVE ERROR.—(1) In the case of an officer or former officer who the Secretary of the military department concerned determines was not considered for selection for promotion from in or above the promotion zone by a mandatory promotion board convened under section 14101(a) of this title because of administrative error, the Secretary concerned shall convene a special selection board under this subsection to determine whether such officer or former officer should be recommended for promotion. Any such board shall be convened under regulations prescribed by the Secretary of Defense and shall be appointed and composed in accordance with section 14102 of this title and shall include the representation of competitive categories required by that section. The members of a board convened under this subsection shall be required to take an oath in the same manner as prescribed in section 14103 of this title.

(2) A special selection board convened under this subsection shall consider the record of the officer or former officer as that record would have appeared to the promotion board that should have considered the officer or former officer. That record shall be compared with a sampling of the records of those officers of the same grade and competitive category who were recommended for promotion and those officers of the same grade and competitive category who were not recommended for promotion by that board.

(3) If a special selection board convened under paragraph (1) does not recommend for promotion an officer or former officer in a grade below the grade of colonel or, in the case of an officer or former officer of the Navy, captain, whose name was referred to it

for consideration, the officer or former officer shall be considered to have failed of selection for promotion.

(b) OFFICERS CONSIDERED BUT NOT SELECTED; MATERIAL ERROR.—(1) In the case of an officer or former officer who was eligible for promotion and was considered for selection for promotion from in or above the promotion zone under this chapter by a selection board but was not selected, the Secretary of the military department concerned may, under regulations prescribed by the Secretary of Defense, convene a special selection board under this subsection to determine whether the officer or former officer should be recommended for promotion, if the Secretary determines that—

(A) the action of the selection board that considered the officer or former officer was contrary to law or involved material error of fact or material administrative error; or

(B) the selection board did not have before it for its consideration material information.

(2) A special selection board convened under paragraph (1) shall be appointed and composed in accordance with section 14102 of this title (including the representation of competitive categories required by that section), and the members of such a board shall take an oath in the same manner as prescribed in section 14103 of this title.

(3) Such board shall consider the record of the officer or former officer as that record, if corrected, would have appeared to the selection board that considered the officer or former officer. That record shall be compared with a sampling of the records of those officers of the same grade and competitive category who were recommended for promotion and those officers of the same grade and competitive category who were not recommended for promotion by that board.

(4) If a special selection board convened under paragraph (1) does not recommend for promotion an officer or former officer in the grade of lieutenant colonel or commander or below whose name was referred to it for consideration, the officer or former officer shall be considered to have failed of selection for promotion by the board which did consider the officer but incurs no additional failure of selection for promotion from the action of the special selection board.

(c) REPORT.—Each special selection board convened under this section shall submit to the Secretary of the military department concerned a written report, signed by each member of the board, containing the name of each officer it recommends for promotion and certifying that the board has considered carefully the record of each officer whose name was referred to it.

(d) APPLICABLE PROVISIONS.—The provisions of sections 14104, 14109, 14110, and 14111 of this title apply to the report and proceedings of a special selection board convened under this section in the same manner as they apply to the report and proceedings of a promotion board convened under section 14101(a) of this title.

(e) APPOINTMENT OF OFFICERS RECOMMENDED FOR PROMOTION.—(1) An officer whose name is placed on a promotion list as a result of recommendation for promotion by a special selection board convened under this section, shall, as soon as practicable, be appointed to the next higher grade in accordance with the law and

policies which would have been applicable had he been recommended for promotion by the board which should have considered or which did consider him.

(2) An officer who is promoted to the next higher grade as the result of the recommendation of a special selection board convened under this section shall, upon such promotion, have the same date of rank, the same effective date for the pay and allowances of that grade, and the same position on the reserve active-status list as the officer would have had if the officer had been recommended for promotion to that grade by the selection board which should have considered, or which did consider, the officer.

(3) If the report of a special selection board convened under this section, as approved by the President, recommends for promotion to the next higher grade an officer not currently eligible for promotion or a former officer whose name was referred to it for consideration, the Secretary concerned may act under section 1552 of this title to correct the military record of the officer or former officer to correct an error or remove an injustice resulting from not being selected for promotion by the board which should have considered, or which did consider, the officer.

(f) TIME LIMITS FOR CONSIDERATION.—The Secretary of Defense may prescribe by regulation the circumstances under which consideration by a special selection board is contingent upon application for consideration by an officer or former officer and time limits within which an officer or former officer must make such application in order to be considered by a special selection board under this section.

(g) LIMITATION OF OTHER JURISDICTION.—No official or court of the United States shall have power or jurisdiction—

(1) over any claim based in any way on the failure of an officer or former officer of the armed forces to be selected for promotion by a selection board convened under chapter 1403 of this title until—

(A) the claim has been referred to a special selection board by the Secretary concerned and acted upon by that board; or

(B) the claim has been rejected by the Secretary without consideration by a special selection board; or

(2) to grant any relief on such a claim unless the officer or former officer has been selected for promotion by a special selection board convened under this section to consider the officer's claim.

(h) JUDICIAL REVIEW.—(1) A court of the United States may review a determination by the Secretary concerned under subsection (a)(1), (b)(1), or (e)(3) not to convene a special selection board. If a court finds the determination to be arbitrary or capricious, not based on substantial evidence, or otherwise contrary to law, it shall remand the case to the Secretary concerned, who shall provide for consideration of the officer or former officer by a special selection board under this section.

(2) If a court finds that the action of a special selection board which considers an officer or former officer was contrary to law or involved material error of fact or material administrative error, it shall remand the case to the Secretary concerned, who shall pro-

vide the officer or former officer reconsideration by a new special selection board.

(i) DESIGNATION OF BOARDS.—The Secretary of the military department concerned may designate a promotion board convened under section 14101(a) of this title as a special selection board convened under this section. A board so designated may function in both capacities.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2947.)

§ 14503. Discharge of officers with less than five years of commissioned service or found not qualified for promotion to first lieutenant or lieutenant (junior grade)

(a) AUTHORIZED DISCHARGES.—The Secretary of the military department concerned may discharge any reserve officer who—

(1) has less than five years of service in an active status as a commissioned officer; or

(2) is serving in the grade of second lieutenant or ensign and has been found not qualified for promotion to the grade of first lieutenant or lieutenant (junior grade).

(b) TIME FOR DISCHARGE.—(1) An officer described in subsection (a)(2)—

(A) may be discharged at any time after being found not qualified for promotion; and

(B) if not sooner discharged, shall be discharged at the end of the 18-month period beginning on the date on which the officer is first found not qualified for promotion.

(2) Paragraph (1) shall not apply if the officer is sooner promoted.

(c) REGULATIONS.—Discharges under this section shall be made under regulations prescribed by the Secretary of Defense and may be made without regard to section 12645 of this title.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2949.)

§ 14504. Effect of failure of selection for promotion: reserve first lieutenants of the Army, Air Force, and Marine Corps and reserve lieutenants (junior grade) of the Navy

(a) GENERAL RULE.—A first lieutenant on the reserve active-status list of the Army, Air Force, or Marine Corps or a lieutenant (junior grade) on the reserve active-status list of the Navy who has failed of selection for promotion to the next higher grade for the second time and whose name is not on a list of officers recommended for promotion to the next higher grade shall be separated in accordance with section 14513 of this title not later than the first day of the seventh month after the month in which the President approves the report of the board which considered the officer for the second time.

(b) EXCEPTIONS.—Subsection (a) does not apply (1) in the case of an officer retained as provided by regulation of the Secretary of the military department concerned in order to meet planned mobilization needs for a period not in excess of 24 months beginning with the date on which the President approves the report of the selec-

tion board which resulted in the second failure, or (2) as provided in section 12646 or 12686 of this title.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2950.)

§ 14505. Effect of failure of selection for promotion: reserve captains of the Army, Air Force, and Marine Corps and reserve lieutenants of the Navy

Unless retained as provided in section 12646 or 12686 of this title, a captain on the reserve active-status list of the Army, Air Force, or Marine Corps or a lieutenant on the reserve active-status list of the Navy who has failed of selection for promotion to the next higher grade for the second time and whose name is not on a list of officers recommended for promotion to the next higher grade and who has not been selected for continuation on the reserve active-status list under section 14701 of this title, shall be separated in accordance with section 14513 of this title not later than the first day of the seventh month after the month in which the President approves the report of the board which considered the officer for the second time.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2950.)

§ 14506. Effect of failure of selection for promotion: reserve majors of the Army, Air Force, and Marine Corps and reserve lieutenant commanders of the Navy

Unless retained as provided in section 12646, 12686, 14701, or 14702 of this title, each reserve officer of the Army, Navy, Air Force, or Marine Corps who holds the grade of major or lieutenant commander who has failed of selection to the next higher grade for the second time and whose name is not on a list of officers recommended for promotion to the next higher grade shall, if not earlier removed from the reserve active-status list, be removed from that list in accordance with section 14513 of this title on the later of (1) the first day of the month after the month in which the officer completes 20 years of commissioned service, or (2) the first day of the seventh month after the month in which the President approves the report of the board which considered the officer for the second time.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2951; amended P.L. 104–106, § 1501(b)(29), Feb. 10, 1996, 110 Stat. 498; P.L. 106–65, § 514(a), Oct. 5, 1999, 113 Stat. 593.)

§ 14507. Removal from the reserve active-status list for years of service: reserve lieutenant colonels and colonels of the Army, Air Force, and Marine Corps and reserve commanders and captains of the Navy

(a) LIEUTENANT COLONELS AND COMMANDERS.—Unless continued on the reserve active-status list under section 14701 or 14702 of this title or retained as provided in section 12646 or 12686 of this title, each reserve officer of the Army, Navy, Air Force, or Marine Corps who holds the grade of lieutenant colonel or commander and who is not on a list of officers recommended for promotion to the next higher grade shall (if not earlier removed from the reserve active-status list) be removed from that list under section 14514 of this title on the first day of the month after the month in which the officer completes 28 years of commissioned service.

(b) COLONELS AND NAVY CAPTAINS.—Unless continued on the reserve active-status list under section 14701 or 14702 of this title or retained as provided in section 12646 or 12686 of this title, each reserve officer of the Army, Air Force, or Marine Corps who holds the grade of colonel, and each reserve officer of the Navy who holds the grade of captain, and who is not on a list of officers recommended for promotion to the next higher grade shall (if not earlier removed from the reserve active-status list) be removed from that list under section 14514 of this title on the first day of the month after the month in which the officer completes 30 years of commissioned service. This subsection does not apply to the adjutant general or assistant adjutants general of a State.

(c) TEMPORARY AUTHORITY TO RETAIN CERTAIN OFFICERS DESIGNATED AS JUDGE ADVOCATES.—(1) Notwithstanding the provisions of subsections (a) and (b), the Secretary of the Air Force may retain on the reserve active-status list any reserve officer of the Air Force who is designated as a judge advocate and who obtained the first professional degree in law while on an educational delay program subsequent to being commissioned through the Reserve Officers' Training Corps.

(2) No more than 50 officers may be retained on the reserve active-status list under the authority of paragraph (1) at any time.

(3) No officer may be retained on the reserve active-status list under the authority of paragraph (1) for a period exceeding three years from the date on which, but for that authority, that officer would have been removed from the reserve active-status list under subsection (a) or (b).

(4) The authority of the Secretary of the Air Force under paragraph (1) expires on September 30, 2003.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2951; amended P.L. 104–201, § 508(a), Sept. 23, 1996, 110 Stat. 2513.)

§ 14508. Removal from the reserve active-status list for years of service: reserve general and flag officers

(a) THIRTY YEARS SERVICE OR FIVE YEARS IN GRADE.—Unless retired, transferred to the Retired Reserve, or discharged at an earlier date, each reserve officer of the Army, Air Force, or Marine Corps in the grade of brigadier general who has not been recommended for promotion to the grade of major general, and each reserve officer of the Navy in the grade of rear admiral (lower half) who has not been recommended for promotion to rear admiral shall, 30 days after completion of 30 years of commissioned service or on the fifth anniversary of the date of the officer's appointment in the grade of brigadier general or rear admiral (lower half), whichever is later, be separated in accordance with section 14514 of this title.

(b) THIRTY-FIVE YEARS SERVICE OR FIVE YEARS IN GRADE.—Unless retired, transferred to the Retired Reserve, or discharged at an earlier date, each reserve officer of the Army, Air Force, or Marine Corps in the grade of major general, and each reserve officer of the Navy in the grade of rear admiral, shall, 30 days after completion of 35 years of commissioned service or on the fifth anniversary of the date of the officer's appointment in the grade of major

general or rear admiral, whichever is later, be separated in accordance with section 14514 of this title.

(c) RETENTION OF BRIGADIER GENERALS.—A reserve officer of the Army or Air Force in the grade of brigadier general who would otherwise be removed from an active status under subsection (a) may, in the discretion of the Secretary of the Army or the Secretary of the Air Force, as the case may be, be retained in an active status, but not later than the last day of the month in which the officer becomes 60 years of age. Not more than 10 officers of the Army and not more than 10 officers of the Air Force may be retained under this subsection at any one time.

(d) RETENTION OF MAJOR GENERALS.—A reserve officer of the Army or Air Force in the grade of major general who would otherwise be removed from an active status under subsection (b) may, in the discretion of the Secretary of the Army or the Secretary of the Air Force, as the case may be, be retained in an active status, but not later than the date on which the officer becomes 62 years of age. Not more than 10 officers of the Army and not more than 10 officers of the Air Force may be retained under this subsection at any one time.

(e) EXCEPTION FOR STATE ADJUTANTS GENERAL AND ASSISTANT ADJUTANTS GENERAL.—This section does not apply to an officer who is the adjutant general or assistant adjutant general of a State.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2951; amended P.L. 104–106, § 1501(b)(30), Feb. 10, 1996, 110 Stat. 498; P.L. 105–85, § 521(b), Nov. 18, 1997, 111 Stat. 1734.)

§ 14509. Separation at age 60: reserve officers in grades below brigadier general or rear admiral (lower half)

Each reserve officer of the Army, Navy, Air Force, or Marine Corps in a grade below brigadier general or rear admiral (lower half) who has not been recommended for promotion to the grade of brigadier general or rear admiral (lower half) and is not a member of the Retired Reserve shall, on the last day of the month in which that officer becomes 60 years of age, be separated in accordance with section 14515 of this title.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2952.)

§ 14510. Separation at age 60: reserve brigadier generals and rear admirals (lower half)

Unless retired, transferred to the Retired Reserve, or discharged at an earlier date, each reserve officer of the Army, Air Force, or Marine Corps in the grade of brigadier general who has not been recommended for promotion to the grade of major general, and each reserve rear admiral (lower half) of the Navy who has not been recommended for promotion to the grade of rear admiral, except an officer covered by section 14512 of this title, shall be separated in accordance with section 14515 of this title on the last day of the month in which the officer becomes 60 years of age.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2952.)

§ 14511. Separation at age 62: major generals and rear admirals

Unless retired, transferred to the Retired Reserve, or discharged at an earlier date, each reserve officer of the Army, Air Force, or Marine Corps in the grade of major general and each reserve officer of the Navy in the grade of rear admiral, except an officer covered by section 14512 of this title, shall be separated in accordance with section 14515 of this title on the last day of the month in which the officer becomes 62 years of age.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2953.)

§ 14512. Separation at age 64: officers holding certain offices

(a) ARMY AND AIR FORCE.—Unless retired, transferred to the Retired Reserve, or discharged at an earlier date, a reserve officer of the Army or Air Force who is Chief of the National Guard Bureau, an adjutant general, or if a reserve officer of the Army, commanding general of the troops of a State, shall on the last day of the month in which the officer becomes 64 years of age, be separated in accordance with section 14515 of this title.

(b) NAVY AND MARINE CORPS.—The Secretary of the Navy may defer the retirement under section 14510 or 14511 of a reserve officer of the Navy in a grade above captain or a reserve officer of the Marine Corps in a grade above colonel and retain the officer in an active status until the officer becomes 64 years of age. Not more than 10 officers may be so deferred at any one time, distributed between the Naval Reserve and the Marine Corps Reserve as the Secretary determines.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2953.)

§ 14513. Separation for failure of selection of promotion

Each reserve officer of the Army, Navy, Air Force, or Marine Corps who is in an active status and whose removal from an active status or from a reserve active-status list is required by section 14504, 14505, or 14506 of this title shall (unless the officer's separation is deferred or the officer is continued in an active status under another provision of law) not later than the date specified in those sections—

(1) be transferred to an inactive status if the Secretary concerned determines that the officer has skills which may be required to meet the mobilization needs of the officer's armed force;

(2) be transferred to the Retired Reserve, if the officer is qualified and applies for such transfer; or

(3) if the officer is not transferred to an inactive status or to the Retired Reserve, be discharged from the officer's reserve appointment.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2953.)

§ 14514. Discharge or retirement for years of service or after selection for early removal

Each reserve officer of the Army, Navy, Air Force, or Marine Corps who is in an active status and who is required to be removed from an active status or from a reserve active-status list, as the

case may be, under section 14507, 14508, 14704, or 14705 of this title (unless the officer is sooner separated or the officer's separation is deferred or the officer is continued in an active status under another provision of law), in accordance with those sections, shall—

(1) be transferred to the Retired Reserve, if the officer is qualified and applies for such transfer; or

(2) if the officer is not qualified or does not apply for such transfer, be discharged from the officer's reserve appointment.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2953.)

§ 14515. Discharge or retirement for age

Each reserve officer of the Army, Navy, Air Force, or Marine Corps who is in an active status or on an inactive-status list and who reaches the maximum age specified in section 14509, 14510, 14511, or 14512 of this title for the officer's grade or position shall (unless the officer is sooner separated or the officer's separation is deferred or the officer is continued in an active status under another provision of law) not later than the last day of the month in which the officer reaches that maximum age—

(1) be transferred to the Retired Reserve, if the officer is qualified and applies for such transfer; or

(2) if the officer is not qualified or does not apply for transfer to the Retired Reserve, be discharged from the officer's reserve appointment.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2954; amended P.L. 104–106, § 1501(b)(31), Feb. 10, 1996, 110 Stat. 498.)

§ 14516. Separation to be considered involuntary

The separation of an officer pursuant to section 14513, 14514, or 14515 of this title shall be considered to be an involuntary separation for purposes of any other provision of law.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2954.)

§ 14517. Entitlement of officers discharged under this chapter to separation pay

An officer who is discharged under section 14513, 14514, or 14515 of this title is entitled to separation pay under section 1174 of this title if otherwise eligible under that section.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2954.)

§ 14518. Continuation of officers to complete disciplinary action

The Secretary concerned may delay the separation or retirement under this chapter of an officer against whom an action has been commenced with a view to trying the officer by court-martial. Any such delay may continue until the completion of the disciplinary action against the officer.

(Added P.L. 106–65, § 511(a), Oct. 5, 1999, 113 Stat. 592.)

CHAPTER 1409—CONTINUATION OF OFFICERS ON THE RESERVE ACTIVE-STATUS LIST AND SELECTIVE EARLY REMOVAL

Sec.
14701. Selection of officers for continuation on the reserve active-status list.
14702. Retention on reserve active-status list of certain officers until age 60.
14703. Authority to retain chaplains and officers in medical specialties until specified age.
14704. Selective early removal from the reserve active-status list.
14705. Selective early retirement: reserve general and flag officers of the Navy and Marine Corps.
14706. Computation of total years of service.

§ 14701. Selection of officers for continuation on the reserve active-status list

(a) CONSIDERATION FOR CONTINUATION.—(1) A reserve officer of the Army, Navy, Air Force, or Marine Corps who is required to be removed from the reserve active-status list under section 14505, 14506, or 14507 of this title may, subject to the needs of the service and to section 14509 of this title, be considered for continuation on the reserve active-status list by a selection board convened under section 14101(b) of this title.

(2) A reserve officer who holds the grade of captain in the Army, Air Force, or Marine Corps or the grade of lieutenant in the Navy and who is subject to separation under section 14513 of this title may not be continued on the reserve active-status list under this subsection for a period which extends beyond the last day of the month in which the officer completes 20 years of commissioned service.

(3) A reserve officer who holds the grade of major or lieutenant commander and who is subject to separation under section 14513 of this title may not be continued on the reserve active-status list under this subsection for a period which extends beyond the last day of the month in which the officer completes 24 years of commissioned service.

(4) A reserve officer who holds the grade of lieutenant colonel or commander and who is subject to separation under section 14514 of this title may not be continued on the reserve active-status list under this subsection for a period which extends beyond the last day of the month in which the officer completes 33 years of commissioned service.

(5) A reserve officer who holds the grade of colonel in the Army, Air Force, or Marine Corps or the grade of captain in the Navy and who is subject to separation under section 14514 of this title may not be continued on the reserve active-status list under this subsection for a period which extends beyond the last day of the month in which the officer completes 35 years of commissioned service.

(6) An officer who is selected for continuation on the reserve active-status list as a result of the convening of a selection board under section 14101(b) of this title but who declines to continue on that list shall be separated in accordance with section 14513 or 14514 of this title, as the case may be.

(7) Each officer who is continued on the reserve active-status list under this section, who is not subsequently promoted or continued on the active-status list, and whose name is not on a list of officers recommended for promotion to the next higher grade shall (unless sooner separated under another provision of law) be separated in accordance with section 14513 or 14514 of this title, as appropriate, upon the expiration of the period for which the officer was continued on the reserve active-status list.

(b) APPROVAL OF SECRETARY CONCERNED.—Continuation of an officer on the reserve active-status list under this section pursuant to action of a continuation board convened under section 14101(b) of this title is subject to the approval of the Secretary of the military department concerned.

(c) INSTRUCTIONS TO CONTINUATION BOARDS.—A continuation board convened under section 14101(b) of this title to consider officers for continuation on the reserve active-status list under this section shall act in accordance with the instructions and directions provided to the board by the Secretary of the military department concerned.

(d) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the administration of this section.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2954; amended P.L. 106–398, § 1[522], Oct. 30, 2000, 114 Stat. 1654, 1654A–108.)

§ 14702. Retention on reserve active-status list of certain officers until age 60

(a) RETENTION.—Notwithstanding the provisions of section 14506, 14507, or 14508 of this title, the Secretary of the military department concerned may, with the officer's consent, retain on the reserve active-status list an officer in the grade of major, lieutenant colonel, colonel, or brigadier general who is—

(1) an officer of the Army National Guard of the United States and assigned to a headquarters or headquarters detachment of a State; or

(2) a reserve officer of the Army or Air Force who, as a condition of continued employment as a National Guard or Reserve technician is required by the Secretary concerned to maintain membership in a Selected Reserve unit or organization.

(b) SEPARATION AT AGE 60.—An officer may be retained under this section only so long as the officer continues to meet the conditions of subsection (a)(1) or (a)(2). An officer may not be retained under this section after the last day of the month in which the officer becomes 60 years of age.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2955; amended P.L. 105–85, § 521(a), Nov. 18, 1997, 111 Stat. 1734.)

§ 14703. Authority to retain chaplains and officers in medical specialties until specified age

(a) RETENTION.—Notwithstanding any provision of chapter 1407 of this title and except for officers referred to in sections 14503, 14504, 14505, and 14506 of this title and under regulations prescribed by the Secretary of Defense—

(1) the Secretary of the Army may, with the officer's consent, retain in an active status any reserve officer assigned to the Medical Corps, the Dental Corps, the Veterinary Corps, the Medical Services Corps (if the officer has been designated as allied health officer or biomedical sciences officer in that Corps), the Optometry Section of the Medical Services Corps, the Chaplains, the Army Nurse Corps, or the Army Medical Specialists Corps;

(2) the Secretary of the Navy may, with the officer's consent, retain in an active status any reserve officer appointed in the Medical Corps, Dental Corps, Nurse Corps, or Chaplain Corps or appointed in the Medical Services Corps and designated to perform as a veterinarian, optometrist, podiatrist, allied health officer, or biomedical sciences officer; and

(3) the Secretary of the Air Force may, with the officer's consent, retain in an active status any reserve officer who is designated as a medical officer, dental officer, Air Force nurse, Medical Service Corps officer, biomedical sciences officer, or chaplain.

(b) SEPARATION AT SPECIFIED AGE.—An officer may not be retained in active status under this section later than the date on which the officer becomes 67 years of age.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2956; amended P.L. 106–65, § 516, Oct. 5, 1999, 113 Stat. 594; P.L. 106–398, § 1[523], Oct. 30, 2000, 114 Stat. 1654, 1654A–108.)

§ 14704. Selective early removal from the reserve active-status list

(a) BOARDS TO RECOMMEND OFFICERS FOR REMOVAL FROM RESERVE ACTIVE-STATUS LIST.—Whenever the Secretary of the military department concerned determines that there are in any reserve component under the jurisdiction of the Secretary too many officers in any grade and competitive category who have at least 30 years of service computed under section 14706 of this title or at least 20 years of service computed under section 12732 of this title, the Secretary may convene a selection board under section 14101(b) of this title to consider all officers on that list who are in that grade and competitive category, and who have that amount of service, for the purpose of recommending officers by name for removal from the reserve active-status list, in the number specified by the Secretary by each grade and competitive category.

(b) SEPARATION OF OFFICERS SELECTED.—In the case of an officer recommended for separation in the report of a board under subsection (a), the Secretary may separate the officer in accordance with section 14514 of this title.

(c) REGULATIONS.—The Secretary of the military department concerned shall prescribe regulations for the administration of this section.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2956.)

§ 14705. Selective early retirement: reserve general and flag officers of the Navy and Marine Corps

(a) AUTHORITY TO CONSIDER.—An officer in the Naval Reserve in an active status serving in the grade of rear admiral (lower half) or rear admiral and an officer in the Marine Corps Reserve in an active status serving in the grade of brigadier general or major general may be considered for early retirement whenever the Secretary of the Navy determines that such action is necessary.

(b) BOARDS.—(1) If the Secretary of the Navy determines that consideration of officers for early retirement under this section is necessary, the Secretary shall convene a continuation board under section 14101(b) of this title to recommend an appropriate number of officers for early retirement.

(2) In the case of such a board convened to consider officers in the grade of rear admiral or major general, the Secretary of the Navy may appoint the board without regard to section 14102(b) of this title. In doing so, however, the Secretary shall ensure that—

(A) each regular commissioned officer appointed to the board holds a grade higher than the grade of rear admiral or major general; and

(B) at least one member of the board is a reserve officer who holds the grade of rear admiral or major general.

(c) SEPARATION UNDER SECTION 14514.—An officer selected for early retirement under this section shall be separated in accordance with section 14514 of this title.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2957; amended P.L. 105–261, § 515, Oct. 17, 1998, 112 Stat. 2008.)

§ 14706. Computation of total years of service

(a) For the purpose of this chapter and chapter 1407 of this title, a Reserve officer's years of service include all service of the officer as a commissioned officer of a uniformed service other than the following:

(1) Service as a warrant officer.

(2) Constructive service.

(3) Service after appointment as a commissioned officer of a reserve component while in a program of advanced education to obtain the first professional degree required for appointment, designation, or assignment to a professional specialty, but only if that service occurs before the officer commences initial service on active duty or initial service in the Ready Reserve in the specialty that results from such a degree.

(b) The exclusion under subsection (a)(3) does not apply to service performed by an officer who previously served on active duty or participated as a member of the Ready Reserve in other than a student status for the period of service preceding the member's service in a student status.

(c) For purposes of subsection (a)(3), an officer shall be considered to be in a professional specialty if the officer is appointed or assigned to the Medical Corps, the Dental Corps, the Veterinary Corps, the Medical Service Corps, the Nurse Corps, or the Army Medical Specialists Corps or is designated as a chaplain or judge advocate.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2957; amended in it entirety P.L. 106–65, § 515, Oct. 5, 1999, 113 Stat. 594.)

CHAPTER 1411—ADDITIONAL PROVISIONS RELATING TO INVOLUNTARY SEPARATION

Sec.
14901. Separation of chaplains for loss of professional qualifications.
14902. Separation for substandard performance and for certain other reasons.
14903. Boards of inquiry.
14904. Rights and procedures.
14905. Officer considered for removal: retirement or discharge.
14906. Officers eligible to serve on boards.
14907. Army National Guard of the United States and Air National Guard of the United States: discharge and withdrawal of Federal recognition of officers absent without leave.

§ 14901. Separation of chaplains for loss of professional qualifications

(a) SEPARATION.—Under regulations prescribed by the Secretary of Defense, an officer on the reserve active-status list who is appointed or designated as a chaplain may, if the officer fails to maintain the qualifications needed to perform the professional function of a chaplain, be discharged. The authority under the preceding sentence applies without regard to the provisions of section 12645 of this title.

(b) EFFECT OF SEPARATION.—If an officer separated under this section is eligible for retirement, the officer may be retired. If the officer has completed the years of service required for eligibility for retired pay under chapter 1223 of this title, the officer may be transferred to the Retired Reserve.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2957.)

§ 14902. Separation for substandard performance and for certain other reasons

(a) SUBSTANDARD PERFORMANCE OF DUTY.—The Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record of any reserve officer to determine whether that officer should be required, because that officer's performance has fallen below standards prescribed by the Secretary concerned, to show cause for retention in an active status.

(b) MISCONDUCT, ETC.—The Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record of any reserve officer to determine whether that officer should be required, because of misconduct, because of moral or professional dereliction, or because the officer's retention is not clearly consistent with the interests of national security, to show cause for retention in an active status.

(c) REGULATIONS.—The authority of the Secretary of a military department under this section shall be carried out subject to such limitations as the Secretary of Defense may prescribe by regulation.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2958.)

§ 14903. Boards of inquiry

(a) CONVENING OF BOARDS.—The Secretary of the military department concerned shall convene a board of inquiry at such time and place as the Secretary may prescribe to receive evidence and review the case of any officer who has been required to show cause for retention in an active status under section 14902 of this title. Each board of inquiry shall be composed of not less than three officers who have the qualifications prescribed in section 14906 of this title.

(b) RIGHT TO FAIR HEARING.—A board of inquiry shall give a fair and impartial hearing to each officer required under section 14902 of this title to show cause for retention in an active status.

(c) RECOMMENDATIONS TO SECRETARY.—If a board of inquiry determines that the officer has failed to establish that the officer should be retained in an active status, the board shall recommend to the Secretary concerned that the officer not be retained in an active status.

(d) ACTION BY SECRETARY.—After review of the recommendation of the board of inquiry, the Secretary may—

(1) remove the officer from an active status; or

(2) determine that the case be closed.

(e) ACTION IN CASES WHERE CAUSE FOR RETENTION IS ESTABLISHED.—(1) If a board of inquiry determines that an officer has established that the officer should be retained in an active status or if the Secretary determines that the case be closed, the officer's case is closed.

(2) An officer who is required to show cause for retention under section 14902(a) of this title and whose case is closed under paragraph (1) may not again be required to show cause for retention under such subsection during the one-year period beginning on the date of that determination.

(3)(A) Subject to subparagraph (B), an officer who is required to show cause for retention under section 14902(b) of this title and whose case is closed under paragraph (1) may again be required to show cause for retention at any time.

(B) An officer who has been required to show cause for retention under section 14902(b) of this title and who is thereafter retained in an active status may not again be required to show cause for retention under such section solely because of conduct which was the subject of the previous proceeding, unless the recommendations of the board of inquiry that considered the officer's case are determined to have been obtained by fraud or collusion.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2958; amended P.L. 104–106, § 1501(b)(32), Feb. 10, 1996, 110 Stat. 498.)

§ 14904. Rights and procedures

(a) PROCEDURAL RIGHTS.—Under regulations prescribed by the Secretary of Defense, an officer required under section 14902 of this title to show cause for retention in an active status—

(1) shall be notified in writing, at least 30 days before the hearing of the officer's case by a board of inquiry, of the reasons for which the officer is being required to show cause for retention in an active status;

(2) shall be allowed a reasonable time, as determined by the board of inquiry, to prepare for showing of cause for retention in an active status;

(3) shall be allowed to appear in person and to be represented by counsel at proceedings before the board of inquiry; and

(4) shall be allowed full access to, and shall be furnished copies of, records relevant to the case, except that the board of inquiry shall withhold any record that the Secretary concerned determines should be withheld in the interest of national security.

(b) SUMMARY OF RECORDS WITHHELD.—When a record is withheld under subsection (a)(4), the officer whose case is under consideration shall, to the extent that the interest of national security permits, be furnished a summary of the record so withheld.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2959.)

§ 14905. Officer considered for removal: retirement or discharge

(a) VOLUNTARY RETIREMENT OR DISCHARGE.—At any time during proceedings under this chapter with respect to the removal of an officer from an active status, the Secretary of the military department concerned may grant a request by the officer—

(1) for voluntary retirement, if the officer is qualified for retirement;

(2) for transfer to the Retired Reserve if the officer has completed the years of service required for eligibility for retired pay under chapter 1223 of this title and is otherwise eligible for transfer to the Retired Reserve; or

(3) for discharge in accordance with subsection (b)(3).

(b) REQUIRED RETIREMENT OR DISCHARGE.—An officer removed from an active status under section 14903 of this title shall—

(1) if eligible for voluntary retirement under any provision of law on the date of such removal, be retired in the grade and with the retired pay for which he would be eligible if retired under that provision;

(2) if eligible for transfer to the Retired Reserve and has completed the years of service required for retired pay under chapter 1223 of this title, be transferred to the Retired Reserve; and

(3) if ineligible for retirement or transfer to the Retired Reserve under paragraph (1) or (2) on the date of such removal—

(A) be honorably discharged in the grade then held, in the case of an officer whose case was brought under subsection (a) of section 14902 of this title; or

(B) be discharged in the grade then held, in the case of an officer whose case was brought under subsection (b) of section 14902 of this title.

(c) SEPARATION PAY.—An officer who is discharged under subsection (b)(3) is entitled, if eligible therefor, to separation pay under section 1174(c) of this title.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2959.)

§ 14906. Officers eligible to serve on boards

(a) COMPOSITION OF BOARDS.—Each board convened under this chapter shall consist of officers appointed as follows:

(1) Each member of the board shall be an officer of the same armed force as the officer being required to show cause for retention in an active status.

(2) Each member of the board shall hold a grade above major or lieutenant commander, except that at least one member of the board shall hold a grade above lieutenant colonel or commander.

(3) Each member of the board shall be senior in grade to any officer to be considered by the board.

(b) LIMITATION.—A person may not be a member of more than one board convened under this chapter to consider the same officer.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2960; amended P.L. 106–65, § 504(b), Oct. 5, 1999, 113 Stat. 591.)

§ 14907. Army National Guard of the United States and Air National Guard of the United States: discharge and withdrawal of Federal recognition of officers absent without leave

(a) AUTHORITY TO WITHDRAW FEDERAL RECOGNITION.—If an officer of the Army National Guard of the United States or the Air National Guard of the United States has been absent without leave for three months, the Secretary of the Army or the Secretary of the Air Force, as appropriate, may—

(1) terminate the reserve appointment of the officer; and

(2) withdraw the officer's Federal recognition as an officer of the National Guard.

(b) DISCHARGE FROM RESERVE APPOINTMENT.—An officer of the Army National Guard of the United States or the Air National Guard of the United States whose Federal recognition as an officer of the National Guard is withdrawn under section 323(b) of title 32 shall be discharged from the officer's appointment as a reserve officer of the Army or the Air Force, as the case may be.

(Added P.L. 103–337, § 1611, Oct. 5, 1994, 108 Stat. 2960.)

PART IV—TRAINING FOR RESERVE COMPONENTS AND EDUCATIONAL ASSISTANCE PROGRAMS

Chap.		Sec.
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CHAPTER 1601—TRAINING GENERALLY

[No present sections]

CHAPTER 1606—EDUCATIONAL ASSISTANCE FOR MEMBERS OF THE SELECTED RESERVE

Sec.
16131. Educational assistance program: establishment; amount.
16132. Eligibility for educational assistance.
16133. Time limitation for use of entitlement.
16134. Termination of assistance.
16135. Failure to participate satisfactorily; penalties.
16136. Administration of program.
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§ 16131. Educational assistance program: establishment; amount

(a) To encourage membership in units of the Selected Reserve of the Ready Reserve, the Secretary of each military department, under regulations prescribed by the Secretary of Defense, and the Secretary of Transportation, under regulations prescribed by the Secretary with respect to the Coast Guard when it is not operating as a service in the Navy, shall establish and maintain a program to provide educational assistance to members of the Selected Reserve of the Ready Reserve of the armed forces under the jurisdiction of the Secretary concerned who agree to remain members of the Selected Reserve for a period of not less than six years.

(b)(1) Except as provided in subsections (d) through (f), each educational assistance program established under subsection (a) shall provide for payment by the Secretary concerned, through the Secretary of Veterans Affairs, to each person entitled to educational assistance under this chapter who is pursuing a program of education of an educational assistance allowance at the following rates:

(A) $251 (as increased from time to time under paragraph (2)) per month for each month of full-time pursuit of a program of education;

(B) $188 (as increased from time to time under paragraph (2)) per month for each month of three-quarter-time pursuit of a program of education;

(C) $125 (as increased from time to time under paragraph (2)) per month for each month of half-time pursuit of a program of education; and

(D) an appropriately reduced rate, as determined under regulations which the Secretary of Veterans Affairs shall prescribe, for each month of less than half-time pursuit of a program of education, except that no payment may be made to a

person for less than half-time pursuit if tuition assistance is otherwise available to the person for such pursuit from the military department concerned.

(2) With respect to any fiscal year, the Secretary shall provide a percentage increase (rounded to the nearest dollar) in the rates payable under subparagraphs (A), (B), and (C) of paragraph (1) equal to the percentage by which—

(A) the Consumer Price Index (all items, United States city average) for the 12-month period ending on the June 30 preceding the beginning of the fiscal year for which the increase is made, exceeds

(B) such Consumer Price Index for the 12-month period preceding the 12-month period described in subparagraph (A).

(c)(1) Educational assistance may be provided under this chapter for pursuit of any program of education that is an approved program of education for purposes of chapter 30 of title 38.

(2) Subject to section 3695 of title 38, the maximum number of months of educational assistance that may be provided to any person under this chapter is 36 (or the equivalent thereof in part-time educational assistance).

(3)(A) Notwithstanding any other provision of this chapter or chapter 36 of title 38, any payment of an educational assistance allowance described in subparagraph (B) of this paragraph shall not—

(i) be charged against the entitlement of any individual under this chapter; or

(ii) be counted toward the aggregate period for which section 3695 of title 38 limits an individual's receipt of assistance.

(B) The payment of the educational assistance allowance referred to in subparagraph (A) of this paragraph is the payment of such an allowance to the individual for pursuit of a course or courses under this chapter if the Secretary of Veterans Affairs finds that the individual—

(i) had to discontinue such course pursuit as a result of being ordered to serve on active duty under section 12301(a), 12301(d), 12301(g), 12302, or 12304 of this title; and

(ii) failed to receive credit or training time toward completion of the individual's approved educational, professional, or vocational objective as a result of having to discontinue, as described in clause (i), the individual's course pursuit.

(C) The period for which, by reason of this subsection, an educational assistance allowance is not charged against entitlement or counted toward the applicable aggregate period under section 3695 of title 38 shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or with respect to which the individual lost training time, as determined under subparagraph (B)(ii).

(d)(1) Except as provided in paragraph (2), the amount of the monthly educational assistance allowance payable to a person pursuing a full-time program of apprenticeship or other on-the-job training under this chapter is—

(A) for each of the first six months of the person's pursuit of such program, 75 percent of the monthly educational assist-

ance allowance otherwise payable to such person under this chapter;

(B) for each of the second six months of the person's pursuit of such program, 55 percent of such monthly educational assistance allowance; and

(C) for each of the months following the first 12 months of the person's pursuit of such program, 35 percent of such monthly educational assistance allowance.

(2) In any month in which any person pursuing a program of education consisting of a program of apprenticeship or other on-the-job training fails to complete 120 hours of training, the amount of the monthly educational assistance allowance payable under this chapter to the person shall be limited to the same proportion of the applicable full-time rate as the number of hours worked during such month, rounded to the nearest 8 hours, bears to 120 hours.

(3)(A) Except as provided in subparagraph (B), for each month that such person is paid a monthly educational assistance allowance under this chapter, the person's entitlement under this chapter shall be charged at the rate of—

(i) 75 percent of a month in the case of payments made in accordance with paragraph (1)(A);

(ii) 55 percent of a month in the case of payments made in accordance with paragraph (1)(B); and

(iii) 35 percent of a month in the case of payments made in accordance with paragraph (1)(C).

(B) Any such charge to the entitlement shall be reduced proportionately in accordance with the reduction in payment under paragraph (2).

(e)(1)(A) The amount of the educational assistance allowance payable under this chapter to a person who enters into an agreement to pursue, and is pursuing, a program of education exclusively by correspondence is an amount equal to 55 percent of the established charge which the institution requires nonveterans to pay for the course or courses pursued by such person.

(B) For purposes of subparagraph (A), the term "established charge" means the lesser of—

(i) the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency; or

(ii) the actual charge to the person for such course or courses.

(C) Such allowance shall be paid quarterly on a pro rata basis for the lessons completed by the person and serviced by the institution.

(2) In each case in which the amount of educational assistance is determined under paragraph (1), the period of entitlement of the person concerned shall be charged with one month for each amount equal to the amount of the monthly rate payable under subsection (b)(1)(A) for the fiscal year concerned which is paid to the individual as an educational assistance allowance.

(f)(1) Each individual who is pursuing a program of education consisting exclusively of flight training approved as meeting the requirements of section 16136(c) of this title shall be paid an edu-

cational assistance allowance under this chapter in the amount equal to 60 percent of the established charges for tuition and fees which similarly circumstanced nonveterans enrolled in the same flight course are required to pay.

(2) No educational assistance allowance may be paid under this chapter to an individual for any month during which such individual is pursing a program of education consisting exclusively of flight training until the Secretary has received from that individual and the institution providing such training a certification of the flight training received by the individual during that month and the tuition and other fees charged for that training.

(3) The period of entitlement of an individual pursuing a program of education described in paragraph (1) shall be charged with one month for each amount equal to the amount of the monthly rate payable under subsection (b)(1)(A) for the fiscal year concerned which is paid to that individual as an educational assistance allowance for such program.

(4) The number of solo flying hours for which an individual may be paid an educational assistance allowance under this subsection may not exceed the minimum number of solo flying hours required by the Federal Aviation Administration for the flight rating or certification which is the goal of the individual's flight training.

(g)(1)(A) Subject to subparagraph (B), the Secretary of Veterans Affairs shall approve individualized tutorial assistance for any person entitled to educational assistance under this chapter who—

(i) is enrolled in and pursuing a postsecondary course of education on a half-time or more basis at an educational institution; and

(ii) has a deficiency in a subject required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of, the program of education.

(B) The Secretary of Veterans Affairs shall not approve individualized tutorial assistance for a person pursuing a program of education under this paragraph unless such assistance is necessary for the person to successfully complete the program of education.

(2)(A) Subject to subparagraph (B), the Secretary concerned, through the Secretary of Veterans Affairs, shall pay to a person receiving individualized tutorial assistance pursuant to paragraph (1) a tutorial assistance allowance. The amount of the allowance payable under this paragraph may not exceed $100 for any month, nor aggregate more than $1,200. The amount of the allowance paid under this paragraph shall be in addition to the amount of educational assistance allowance payable to a person under this chapter.

(B) A tutorial assistance allowance may not be paid to a person under this paragraph until the educational institution at which the person is enrolled certifies that—

(i) the individualized tutorial assistance is essential to correct a deficiency of the person in a subject required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of, an approved program of education;

(ii) the tutor chosen to perform such assistance is qualified to provide such assistance and is not the person's parent, spouse, child (whether or not married or over eighteen years of age), brother, or sister; and

(iii) the charges for such assistance do not exceed the customary charges for such tutorial assistance.

(3)(A) A person's period of entitlement to educational assistance under this chapter shall be charged only with respect to the amount of tutorial assistance paid to the person under this subsection in excess of $600.

(B) A person's period of entitlement to educational assistance under this chapter shall be charged at the rate of one month for each amount of assistance paid to the individual under this section in excess of $600 that is equal to the amount of the monthly educational assistance allowance which the person is otherwise eligible to receive for full-time pursuit of an institutional course under this chapter.

(h) A program of education in a course of instruction beyond the baccalaureate degree level shall be provided under this chapter, subject to the availability of appropriations.

(i)(1) In the case of a person who has a skill or specialty designated by the Secretary concerned as a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit or, in the case of critical units, retain personnel, the Secretary concerned may increase the rate of the educational assistance allowance applicable to that person to such rate in excess of the rate prescribed under subparagraphs (A) through (D) of subsection (b)(1) as the Secretary of Defense considers appropriate, but the amount of any such increase may not exceed $350 per month.

(2) In the case of a person who has a skill or specialty designated by the Secretary concerned as a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit or, in the case of critical units, retain personnel, who is eligible for educational benefits under chapter 30 (other than section 3012) of title 38 and who meets the eligibility criteria specified in subparagraphs (A) and (B) of section 16132(a)(1) of this title, the Secretary concerned may increase the rate of the educational assistance allowance applicable to that person to such rate in excess of the rate prescribed under section 3015 of title 38 as the Secretary of Defense considers appropriate, but the amount of any such increase may not exceed $350 per month.

(3) The authority provided by paragraphs (1) and (2) shall be exercised by the Secretaries concerned under regulations prescribed by the Secretary of Defense.

(Added as § 2131 P.L. 95–79, § 402(a), July 30, 1977, 91 Stat. 328, [amended several times], revised in its entirety P.L. 98–525, § 705(a), Oct. 19, 1984, 98 Stat. 2564; amended P.L. 100–689, §§ 110(a), 111(b), Nov. 18, 1988, 102 Stat. 4170, 4172; P.L. 101–189, §§ 642(a), (b), 645(a)(1), (b)(1), Nov. 29, 1989, 103 Stat. 1456, 1458; P.L. 101–237, § 422(b)(2), Dec. 18, 1989, 103 Stat. 2089; P.L. 102–25, § 337(g), April 6, 1991, 105 Stat. 90; P.L. 102–127, § 2(d), Oct. 10, 1991, 105 Stat. 621; P.L. 102–568, §§ 301(b), (d), 310(b), 318, 320(a)(1), Oct. 29, 1992, 106 Stat. 4326, 4330, 4334, 4335; P.L. 103–66, § 12009(b), Aug. 10, 1993, 107 Stat. 416; P.L. 103–160, § 518, Nov. 30, 1993, 107 Stat. 1651; transferred, redesignated § 16131, and amended P.L. 103–337, § 1663(b)(2),(3), Oct. 5, 1994, 108 Stat. 3006, 3007; P.L. 104–106, § 1076, Feb. 10, 1996, 110 Stat. 450; P.L. 104–275, § 105(d), Oct. 9, 1986, 110 Stat. 3326; P.L. 105–85, § 553(a), Nov. 18, 1997, 111 Stat. 1748; P.L. 105–178, § 8203(b), June. 9, 1998, 112 Stat. 493; P.L. 106–65, § 1066(a)(33), Oct. 5, 1999, 113 Stat. 772.)

§ 16132. Eligibility for educational assistance

(a) A person who—

(1) after June 30, 1985—

(A) enlists, reenlists, or extends an enlistment as a Reserve for service in the Selected Reserve for a period of not less than six years; or

(B) is appointed as, or is serving as, a reserve officer and agrees to serve in the Selected Reserve for a period of not less than six years in addition to any other period of obligated service in the Selected Reserve to which the person may be subject; and

(2) before applying for benefits under this section, has completed the requirements of a secondary school diploma (or an equivalency certificate);

is entitled to educational assistance under section 16131 of this title.

(b) Educational assistance may not be provided to a member under this chapter until the member has completed the initial period of active duty for training required of the member.

(c) Each person who becomes entitled to educational assistance under subsection (a) shall at the time the person becomes so entitled be given a statement in writing summarizing the provisions of this chapter and stating clearly and prominently the substance of sections 16134 and 16135 of this title as such sections may apply to the person. At the request of the Secretary of Veterans Affairs, the Secretary of Defense shall transmit a notice of entitlement for each such person to that Secretary.

(d) A person who serves in the Selected Reserve may not receive credit for such service under both the program established by chapter 30 of title 38 and the program established by this chapter but shall elect (in such form and manner as the Secretary of Veterans Affairs may prescribe) the program to which such service is to be credited. However, a person may not receive credit under the program established by this chapter for service (in any grade) on full-time active duty or full-time National Guard duty for the purpose of organizing, administering, recruiting, instructing, or training the reserve components in a position which is included in the end strength required to be authorized each year by section 115(a)(1)(B) of this title.

(Added as § 2132 P.L. 95–79, § 402(a), July 30, 1977, 91 Stat. 329, [amended several times], revised in its entirety P.L. 98–525, § 705(a), Oct. 19, 1984, 98 Stat. 2565; amended P.L. 100–48, § 4, June 1, 1987, 101 Stat. 331; P.L. 100–689, §§ 110(b), 111(b) (1), (2), (3), and (4), Nov. 18, 1988, 102 Stat. 4170, 4172, 4173; P.L. 101–189, §§ 643(a), 645(a)(1), (2), (b)(2), Nov. 29, 1989, 103 Stat. 1458; P.L. 102–25, § 701(f)(6), April 6, 1991, 105 Stat. 115; transferred, redesignated § 16132, and amended P.L. 103–337, § 1663(b)(2),(4), Oct. 5, 1994, 108 Stat. 3006, 3007; P.L. 104–106, § 1501(b)(34), Feb. 10, 1996, 110 Stat. 498; P.L. 106–419, § 102(d), Nov. 1, 2000, 114 Stat. 1825.)

§ 16133. Time limitation for use of entitlement

(a) Except as provided in subsection (b), the period during which a person entitled to educational assistance under this chapter may use such person's entitlement expires (1) at the end of the 10-year period beginning on the date on which such person becomes entitled to such assistance, or (2) on the date the person is separated from the Selected Reserve, whichever occurs first.

(b)(1) In the case of a person—

(A) who is separated from the Selected Reserve because of a disability which was not the result of the individual's own willful misconduct incurred on or after the date on which such person became entitled to educational assistance under this chapter; or

(B) who, on or after the date on which such person became entitled to educational assistance under this chapter ceases to be a member of the Selected Reserve during the period beginning on October 1, 1991, and ending on December 31, 2001, by reason of the inactivation of the person's unit of assignment or by reason of involuntarily ceasing to be designated as a member of the Selected Reserve pursuant to section 10143(a) of this title,

the period for using entitlement prescribed by subsection (a) shall be determined without regard to clause (2) of such subsection.

(2) The provisions of section 3031(f) of title 38 shall apply to the period of entitlement prescribed by subsection (a).

(3) The provisions of section 3031(d) of title 38 shall apply to the period of entitlement prescribed by subsection (a) in the case of a disability incurred in or aggravated by service in the Selected Reserve.

(4) In the case of a member of the Selected Reserve of the Ready Reserve who serves on active duty pursuant to an order to active duty issued under section 12301(a), 12301(d), 12301(g), 12302, or 12304 of this title—

(A) the period of such active duty service plus four months shall not be considered in determining the expiration date applicable to such member under subsection (a); and

(B) the member may not be considered to have been separated from the Selected Reserve for the purposes of clause (2) of such subsection by reason of the commencement of such active duty service.

(Added as § 2133 P.L. 95–79, § 402(a), July 30, 1977, 91 Stat. 329, [amended several times], revised in its entirety P.L. 98–525, § 705(a), Oct. 19, 1984, 98 Stat. 2566; amended P.L. 100–456, § 1233(g)(2), Sept. 29, 1988, 102 Stat. 2058; P.L. 100–689, § 111(b)(5), Nov. 18, 1988, 102 Stat. 4173; P.L. 102–127, § 3, Oct. 10, 1991, 105 Stat. 622; P.L. 102–484, § 4419(a), Oct. 23, 1992, 106 Stat. 2717; P.L. 102–568, § 320(a)(2), Oct. 29, 1992, 106 Stat. 4336; P.L. 103–160, § 561(m), Nov. 30, 1993, 107 Stat. 1668; transferred, redesignated § 16133, and amended P.L. 103–337, § 1663(b)(2),(5), Oct. 5, 1994, 108 Stat. 3006, 3007; P.L. 105–85, § 553(b), Nov. 18, 1997, 111 Stat. 1748; P.L. 105–261, § 561(q), Oct. 17, 1998, 112 Stat. 2027; P.L. 106–398, § 1[571(p)], Oct. 30, 2000, 114 Stat. 1654, 1654A–135.)

§ 16134. Termination of assistance

Educational assistance may not be provided under this chapter—

(1) to a member receiving financial assistance under section 2107 of this title as a member of the Senior Reserve Officer's Training Corps program; or

(2) to a member who fails to participate satisfactorily in required training as a member of the Selected Reserve.

(Added as § 2134 P.L. 95–79, § 402(a), July 30, 1977, 91 Stat. 330, [amended several times], revised in its entirety P.L. 98–525, § 705(a), Oct. 19, 1984, 98 Stat. 2566; transferred and redesignated § 16134 P.L. 103–337, § 1663(b)(2), Oct. 5, 1994, 108 Stat. 3006.)

§ 16135. Failure to participate satisfactorily; penalties

(a)(1) A member of the Selected Reserve of the Ready Reserve of an armed force who fails to participate satisfactorily in required training as a member of the Selected Reserve during a term of enlistment or other period of obligated service that created entitlement of the member to educational assistance under this chapter, and during which the member has received such assistance, shall, at the option of the Secretary concerned—

(A) be ordered to active duty for a period of two years or the period of obligated service the person has remaining under section 16132 of this title, whichever is less; or

(B) be required to refund to the United States an amount determined under subsection (b).

(2) The Secretary concerned may waive the requirements of paragraph (1), or may reduce the amount of any refund under clause (B) of such paragraph, in the case of any individual member when the Secretary determines that the failure to participate satisfactorily was due to reasons beyond the control of the member.

(3) Any refund by a member under this section shall not affect the period of obligation of such member to serve as a Reserve in the Selected Reserve.

(b)(1) The amount of a refund under subsection (a) shall be the amount equal to the product of—

(A) the number of months of obligated service the person has remaining under the agreement entered into under section 16131(a) of this title divided by the original number of months of such obligation; and

(B) the total amount of educational assistance provided to the member under this chapter,

as increased by interest determined under paragraph (2).

(2) The amount computed under paragraph (1) shall bear interest at the rate equal to the highest rate being paid by the United States on the day on which the refund is determined to be due for securities having maturities of 90 days or less and shall accrue from the day on which the member is first notified of the amount due to the United States as a refund under this section.

(Added as § 2135 P.L. 95–79, § 402(a), July 30, 1977, 91 Stat. 330, [amended several times], revised in its entirety P.L. 98–525, § 705(a), Oct. 19, 1984, 98 Stat. 2566; amended P.L. 100–689, § 111(b)(6), Nov. 18, 1988, 102 Stat. 4175; transferred, redesignated § 16135, and amended P.L. 103–337, § 1663(b)(2),(6), Oct. 5, 1994, 108 Stat. 3006, 3007, P.L. 104–106, § 1501(b)(35), Feb. 10, 1996, 110 Stat. 498.)

§ 16136. Administration of program

(a) Educational assistance under this chapter shall be provided through the Department of Veterans Affairs, under agreements to be entered into by the Secretary of Defense, and by the Secretary of Transportation, with the Secretary of Veterans Affairs. Such agreements shall include administrative procedures to ensure the prompt and timely transfer of funds from the Secretary concerned to the Department of Veterans Affairs for the making of payments under this chapter.

(b) Except as otherwise provided in this chapter, the provisions of sections 3470, 3471, 3474, 3476, 3482(g), 3483, and 3485 of title 38 and the provisions of subchapters I and II of chapter 36 of such title (with the exception of sections 3686(a), 3687, and 3692) shall

be applicable to the provision of educational assistance under this chapter. The term "eligible veteran" and the term "a person", as used in those provisions, shall be deemed for the purpose of the application of those provisions to this chapter to refer to a person eligible for educational assistance under this chapter.

(c) The Secretary of Veterans Affairs may approve the pursuit of flight training (in addition to a course of flight training that may be approved under section 3680A(b) of title 38) by an individual entitled to educational assistance under this chapter if—

(1) such training is generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation;

(2) the individual possesses a valid private pilot certificate and meets, on the day the individual begins a course of flight training, the medical requirements necessary for a commercial pilot certificate; and

(3) the flight school courses meet Federal Aviation Administration standards for such courses and are approved by the Federal Aviation Administration and the Sate approving agency.

(Added as § 2136 P.L. 98–525, § 705(a), Oct. 19, 1984, 98 Stat. 2567; amended P.L. 101–189, §§ 642(c), 645(a)(1), Nov. 29, 1989, 103 Stat. 1457, 1458; P.L. 101–237, §§ 405(d)(3), 422(b)(1), Dec. 18, 1989, 103 Stat. 2081, 2089; P.L. 101–510, § 1484(j)(3), Nov. 5, 1990, 104 Stat. 1718; P.L. 102–16, § 10(b), Mar. 22, 1991, 105 Stat. 56; P.L. 102–568, §§ 313(a)(6), 319, Oct. 29, 1992, 106 Stat. 4333, 4335, 4336; transferred and redesignated § 16136 P.L. 103–337, § 1663(b)(2), Oct. 5, 1994, 108 Stat. 3006; P.L. 103–446,§ 601(c), Nov. 2, 1994, 108 Stat. 4670; P.L. 105–368, § 204(b), Nov. 11, 1998, 112 Stat 3327.)

§ 16137. Biennial report to Congress

The Secretary of Defense shall submit to Congress a report not later than March 1 of each odd-numbered year concerning the operation of the educational assistance program established by this chapter during the preceding two fiscal years. Each such report shall include the number of members of the Selected Reserve of the Ready Reserve of each armed force receiving, and the number entitled to receive, educational assistance under this chapter during those fiscal years. The Secretary may submit the report more frequently and adjust the period covered by the report accordingly.

(Added as § 2137 P.L. 98–525, § 705(a), Oct. 19, 1984, 98 Stat. 2567; transferred and redesignated § 16137 P.L. 103–337, § 1663(b)(2), Oct. 5, 1994, 108 Stat. 3006; amended P.L. 104–106, § 1077, Feb. 10, 1996, 110 Stat. 451; amended in its entirety P.L. 106–65, § 548(a), Oct. 5, 1999, 113 Stat. 609.)

CHAPTER 1608—HEALTH PROFESSIONS STIPEND PROGRAM

Sec.
16201. Financial assistance: health-care professionals in reserve components.
16202. Reserve service: required active duty for training.
16203. Penalties and limitations.
16204. Regulations.

§ 16201. Financial assistance: health-care professionals in reserve components

(a) ESTABLISHMENT OF PROGRAM.—For the purpose of obtaining adequate numbers of commissioned officers in the reserve components who are qualified in health professions specialties critically needed in wartime, the Secretary of each military department may establish and maintain a program to provide financial assistance under this chapter to persons engaged in training in such specialties. Under such a program, the Secretary concerned may agree to pay a financial stipend to persons engaged in training in certain health care specialties in return for a commitment to subsequent service in the Ready Reserve.

(b) PHYSICIANS AND DENTISTS IN CRITICAL SPECIALTIES.—(1) Under the stipend program under this chapter, the Secretary of the military department concerned may enter into an agreement with a person who—

(A) is a graduate of a medical school or dental school;

(B) is eligible for appointment, designation, or assignment as a medical officer or dental officer in the Reserve of the armed force concerned; and

(C) is enrolled or has been accepted for enrollment in a residency program for physicians or dentists in a medical or dental specialty designated by the Secretary concerned as a specialty critically needed by that military department in wartime.

(2) Under the agreement—

(A) the Secretary shall agree to pay the participant a stipend, in an amount determined under subsection (e), for the period or the remainder of the period of the residency program in which the participant enrolls or is enrolled;

(B) the participant shall not be eligible to receive such stipend before appointment, designation, or assignment as a medical officer or dental officer for service in the Ready Reserve;

(C) the participant shall be subject to such active duty requirements as may be specified in the agreement and to active duty in time of war or national emergency as provided by law for members of the Ready Reserve; and

(D) the participant shall agree to serve, upon successful completion of the program, two years in the Ready Reserve for each year, or part thereof, for which the stipend is provided,

to be served in the Selected Reserve or in the Individual Ready Reserve as specified in the agreement.

(c) REGISTERED NURSES IN CRITICAL SPECIALTIES.—(1) Under the stipend program under this chapter, the Secretary of the military department concerned may enter into an agreement with a person who—

(A) is a registered nurse;

(B) is eligible for appointment as—

(i) a Reserve officer for service in the Army Reserve in the Army Nurse Corps;

(ii) a Reserve officer for service in the Naval Reserve in the Navy Nurse Corps; or

(iii) a Reserve officer for service in the Air Force Reserve with a view to designation as an Air Force nurse under section 8067(e) of this title; and

(C) is enrolled or has been accepted for enrollment in an accredited program in nursing in a specialty designated by the Secretary concerned as a specialty critically needed by that military department in wartime.

(2) Under the agreement—

(A) the Secretary shall agree to pay the participant a stipend, in an amount determined under subsection (e), for the period or the remainder of the period of the nursing program in which the participant enrolls or is enrolled;

(B) the participant shall not be eligible to receive such stipend before being appointed as a Reserve officer for service in the Ready Reserve—

(i) in the Nurse Corps of the Army or Navy; or

(ii) as an Air Force nurse of the Air Force;

(C) the participant shall be subject to such active duty requirements as may be specified in the agreement and to active duty in time of war or national emergency as provided by law for members of the Ready Reserve; and

(D) the participant shall agree to serve, upon successful completion of the program, two years in the Ready Reserve for each year; or part thereof, for which the stipend is provided, to be served in the Selected Reserve or in the Individual Ready Reserve as specified in the agreement.

(d) BACCALAUREATE STUDENTS IN NURSING OR OTHER HEALTH PROFESSIONS.—(1) Under the stipend program under this chapter, the Secretary of the military department concerned may enter into an agreement with a person who—

(A) will, upon completion of the program, be eligible to be appointed, designated, or assigned as a Reserve officer for duty as a nurse or other health professional; and

(B) is enrolled, or has been accepted for enrollment in the third or fourth year of—

(i) an accredited baccalaureate nursing program; or

(ii) any other accredited baccalaureate program leading to a degree in a health-care profession designated by the Secretary concerned as a profession critically needed by that military department in wartime.

(2) Under the agreement—

(A) the Secretary shall agree to pay the participant a stipend of $100 per month for the period or the remainder of the period of the baccalaureate program in which the participant enrolls or is enrolled;

(B) the participant shall not be eligible to receive such stipend before enlistment in the Ready Reserve;

(C) the participant shall be subject to such active duty requirements as may be specified in the agreement and to active duty in time of war or national emergency as provided by law for members of the Ready Reserve; and

(D) the participant shall agree to serve, upon graduation from the baccalaureate program, one year in the Ready Reserve for each year, or part thereof, for which the stipend is paid.

(e) AMOUNT OF STIPEND.—The amount of a stipend under an agreement under subsection (b) or (c) shall be—

(1) the stipend rate in effect for participants in the Armed Forces Health Professions Scholarship Program under section 2121(d) of this title, if the participant has agreed to serve in the Selected Reserve; or

(2) one-half of that rate, if the participant has agreed to serve in the Individual Ready Reserve.

(Added as § 2128 P.L. 100–180, § 711(A)(3), Dec. 4, 1987, 101 Stat. 1108; transferred, redesignated § 16201, and amended P.L. 103–337, § 1663(c)(2),(5), Oct. 5, 1994, 108 Stat. 3007, 3008; P.L. 104–106, § 736, Feb. 10, 1996, 110 Stat. 383.)

§ 16202. Reserve service: required active duty for training

(a) SELECTED RESERVE.—A person who is required under an agreement under section 16201 of this title to serve in the Selected Reserve shall serve not less than 12 days of active duty for training each year during the period of service required by the agreement.

(b) IRR SERVICE.—A person who is required under an agreement under section 16201 of this title to serve in the Individual Ready Reserve shall serve—

(1) not less than 30 days of initial active duty for training; and

(2) not less than five days of active duty for training each year during the period of service required by the agreement.

(Added as § 2129 P.L. 100–180, § 711(a)(3), Dec. 4, 1987, 101 Stat. 1111; transferred, redesignated § 16202, and amended P.L. 103–337, § 1663(c)(3),(6), Oct. 5, 1994, 108 Stat. 3008.)

§ 16203. Penalties and limitations

(a) FAILURE TO COMPLETE PROGRAM OF TRAINING.—(1) A member of the program who, under regulations prescribed by the Secretary of Defense, is dropped from the program for deficiency in training, or for other reasons, shall be required, at the discretion of the Secretary concerned—

(A) to perform one year of active duty for eacy year (or part thereof) for which such person was provided financial assistance under this section; or

(B) to repay the United States an amount equal to the total amount paid to such person under the program.

(2) The Secretary of a military department, under regulations prescribed by the Secretary of Defense, may relieve a member participating in the program who is dropped from the program from

any requirement that may be imposed under paragraph (1), but such relief shall not relieve him from any military obligation imposed by any other law.

(b) PROHIBITIONS OF DUPLICATE BENEFITS.—Financial assistance may not be provided under this section to a member receiving financial assistance under section 2107 of this title.

(Added as § 2130 P.L. 100–180, § 711(a)(3), Dec. 4, 1987, 101 Stat. 1111; transferred, redesignated § 16203, and amended P.L. 103–337, § 1663(c)(4), Oct. 5, 1994, 108 Stat. 3008.)

§ 16204. Regulations

This chapter shall be administered under regulations prescribed by the Secretary of Defense.

(Added P.L. 103–337, § 1663(c)(1), Oct. 5, 1994, 108 Stat. 3007 [derived from § 2130(c)].)

CHAPTER 1609—EDUCATION LOAN REPAYMENT PROGRAMS

Sec.
16301. Education loan repayment program: enlisted members of Selected Reserve with critical specialties.
16302. Education loan repayment program: health professions officers serving in Selected Reserve with wartime critical medical skill shortages.

§ 16301. Education loan repayment program: enlisted members of Selected Reserve with critical specialties

(a)(1) Subject to the provisions of this section, the Secretary of Defense may repay—

(A) any loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.);

(B) any loan made under part D of such title (the William D. Ford Federal Direct Loan Program, 20 U.S.C. 1087a et seq.); or

(C) any loan made under part E of such title (20 U.S.C. 1087aa et seq.).

Repayment of any such loan shall be made on the basis of each complete year of service performed by the borrower.

(2) The Secretary may repay loans described in paragraph (1) in the case of any person for service performed as an enlisted member of the Selected Reserve of the Ready Reserve of an armed force in a reserve component and military specialty specified by the Secretary of Defense. The Secretary may repay such a loan only if the person to whom the loan was made performed such service after the loan was made.

(b) The portion or amount of a loan that may be repaid under subsection (a) is 15 percent or $500, whichever is greater, for each year of service.

(c) If a portion of a loan is repaid under this section for any year, interest on the remainder of the loan shall accrue and be paid in the same manner as is otherwise required.

(d) Nothing in this section shall be construed to authorize refunding any repayment of a loan.

(e) A person who transfers from service making the person eligible for repayment of loans under this section (as described in subsection (a)(2)) to service making the person eligible for repayment of loans under section 2171 of this title (as described in subsection (a)(2) of that section) during a year shall be eligible to have repaid a portion of such loan determined by giving appropriate fractional credit for each portion of the year so served, in accordance with regulations of the Secretary concerned.

(f) The Secretary of Defense shall, by regulation, prescribe a schedule for the allocation of funds made available to carry out the provisions of this section and section 2171 of this title during any

year for which funds are not sufficient to pay the sum of the amounts eligible for repayment under subsection (a) and section 2171(a) of this title.

(g) The Secretary of Transportation may repay loans described in subsection (a)(1) and otherwise administer this section in the case of members of the Selected Reserve of the Coast Guard Reserve when the Coast Guard is not operating as a service in the Navy.

(Added P.L. 103–337, § 1663(d)(1), Oct. 5, 1994, 108 Stat. 3008 [derived from § 2171]; and amended P.L. 104–106, § 1079(b), Feb. 10, 1996, 110 Stat. 451; P.L. 106–65, § 676, Oct. 5, 1999, 113 Stat. 676.)

§ 16302. Education loan repayment program: health professions officers serving in Selected Reserve with wartime critical medical skill shortages

(a) Under regulations prescribed by the Secretary of Defense and subject to the other provisions of this section, the Secretary concerned may repay—

(1) a loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.);

(2) any loan made under part D of such title (the William D. Ford Federal Direct Loan Program, 20 U.S.C. 1087a et seq.); or

(3) a loan made under part E of such title (20 U.S.C. 1087aa et seq.) after October 1, 1975;

(4) a health professions education loan made or insured under part A of title VII of the Public Health Service Act (42 U.S.C. 292 et seq.) or under part B of title VIII of such Act (42 U.S.C. 297 et seq.); and

(5) a loan made, insured, or guaranteed through a recognized financial or educational institution if that loan was used to finance education regarding a health profession that the Secretary of Defense determines to be critically needed in order to meet identified wartime combat medical skill shortages.

(b) The Secretary concerned may repay loans described in subsection (a) only in the case of a person who—

(1) performs satisfactory service as an officer in the Selected Reserve of an armed force; and

(2) possesses professional qualifications, or is enrolled in a program of education leading to professional qualifications, in a health profession that the Secretary of Defense has determined to be needed critically in order to meet identified wartime combat medical skill shortages.

(c)(1) The amount of any repayment of a loan made under this section on behalf of any person shall be determined on the basis of each complete year of service that is described in subsection (b)(1) and performed by the person after the date on which the loan was made.

(2) Subject to paragraph (3), the amount of a loan that may be repaid under this section on behalf of any person may not exceed $20,000 for each year of service described in paragraph (1).

(3) The total amount that may be repaid on behalf of any person under this section may not exceed $50,000.

(d) The authority provided in this section shall apply only in the case of a person first appointed as a commissioned officer before January 1, 2002.

(Added as § 2172 P.L. 99–145, § 671(a)(1), Nov. 8, 1985, 99 Stat. 661; amended P.L. 100–180, § 713, Dec. 4, 1987, 101 Stat. 1112; P.L. 101–189, § 701(a)–(c), Nov. 29, 1989, 103 Stat. 1467; P.L. 102–484, § 612(f), Oct. 23, 1992, 106 Stat. 2421; P.L. 103–160, § 613(f), Nov. 30, 1993, 107 Stat. 1681; amended, transferred, and redesignated § 16302 P.L. 103–337, §§ 613(e), 1070(a)(9), 1663(d)(2), Oct. 5, 1994, 108 Stat. 2783, 2855, 3009; P.L. 104–106, §§ 613(h), 1079(c), Feb. 10, 1996, 110 Stat. 360, 452; P.L. 104–201, § 613(g), Sept. 23, 1996, 110 Stat. 2544; P.L. 105–85, § 611(h), Nov. 18, 1997, 111 Stat. 1785; P.L. 105–261, §§ 611(h), 654, Oct. 17, 1998, 112 Stat. 2039, 2052; P.L. 106–65, § 611(h), Oct. 5, 1999, 113 Stat. 650; P.L. 106–398, § 1[621(h)], Oct. 30, 2000, 114 Stat. 1654, 1654A–151.)

CHAPTER 1611—OTHER EDUCATIONAL ASSISTANCE PROGRAMS

Sec.
16401. Marine Corps Platoon Leaders Class: college tuition assistance program.

§ 16401. Marine Corps Platoon Leaders Class: college tuition assistance program

(a) AUTHORITY.—The Secretary of the Navy may provide financial assistance to an eligible member of the Marine Corps Reserve for expenses of the member while the member is pursuing on a full-time basis at an institution of higher education a program of education approved by the Secretary that leads to—

(1) a baccalaureate degree in less than five academic years; or

(2) a doctor of jurisprudence or bachelor of laws degree in not more than four academic years.

(b) ELIGIBILITY.—(1) To be eligible for financial assistance under this section, a member of the Marine Corps Reserve must—

(A) be a member of the Marine Corps Platoon Leaders Class program and have successfully completed one six-week (or longer) increment of military training required under that program;

(B) be enrolled on a full-time basis in a program of education referred to in subsection (a) at any institution of higher education; and

(C) enter into a written agreement with the Secretary described in paragraph (2).

(2) A written agreement referred to in paragraph (1)(C) is an agreement between the member and the Secretary in which the member agrees—

(A) to accept an appointment as a commissioned officer in the Marine Corps, if tendered by the President;

(B) to serve on active duty for at least five years; and

(C) under such terms and conditions as shall be prescribed by the Secretary, to serve in the Marine Corps Reserve until the eighth anniversary of the date of the appointment.

(c) COVERED EXPENSES.—Expenses for which financial assistance may be provided under this section are—

(1) tuition and fees charged by the institution of higher education involved;

(2) the cost of books; and

(3) in the case of a program of education leading to a baccalaureate degree, laboratory expenses.

(d) AMOUNT.—The amount of financial assistance provided to a member under this section shall be prescribed by the Secretary, but may not exceed $5,200 for any academic year.

(e) LIMITATIONS.—(1) Financial assistance may be provided to a member under this section only for three consecutive academic years.

(2) Not more than 1,200 members may participate in the financial assistance program under this section in any academic year.

(f) FAILURE TO COMPLETE PROGRAM.—(1) An enlisted member who receives financial assistance under this section may be ordered to active duty in the Marine Corps by the Secretary to serve in an appropriate enlisted grade for such period as the Secretary prescribes, but not for more than four years, and an officer who receives financial assistance under this section may be required to repay the full amount of financial assistance, if the member—

(A) completes the military and academic requirements of the Marine Corps Platoon Leaders Class program and refuses to accept an appointment as a commissioned officer in the Marine Corps when offered or, if already a commissioned officer in the Marine Corps, refuses to accept an assignment on active duty when offered;

(B) fails to complete the military or academic requirements of the Marine Corps Platoon Leaders Class program; or

(C) is disenrolled from the Marine Corps Platoon Leaders Class program for failure to maintain eligibility for an original appointment as a commissioned officer under section 532 of this title.

(2) The Secretary of the Navy may waive the requirements of paragraph (1) in the case of a person who—

(A) becomes unqualified to serve on active duty as an officer due to a circumstance not within the control of the person;

(B) is not physically qualified for appointment under section 532 of this title and later is determined by the Secretary of the Navy under section 505 of this title to be unqualified for service as an enlisted member of the Marine Corps due to a physical or medical condition that was not the result of misconduct or grossly negligent conduct; or

(C) fails to complete the military or academic requirements of the Marine Corps Platoon Leaders Class program due to a circumstance not within the control of the person.

(g) INSTITUTION OF HIGHER EDUCATION DEFINED.—In this section, the term "institution of higher education" has the meaning given that term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(Added P.L. 106–65, § 551(a), Oct. 5, 1999, 113 Stat. 612; amended P.L. 106–398, § 1[533(a)–(d), 533(f)], Oct. 30, 2000, 114 Stat. 1654, 1654A–110, 1654A–111.)

PART V—SERVICE, SUPPLY, AND PROCUREMENT

Chap.		Sec.
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CHAPTER 1801—ISSUE OF SERVICEABLE MATERIAL TO RESERVE COMPONENTS

[No present sections]

CHAPTER 1803—FACILITIES FOR RESERVE COMPONENTS

Sec.
18231. Purpose.
18232. Definitions.
18233. Acquisition.
18233a. Limitation on certain projects; authority to carry out small projects with operation and maintenance funds.
18234. Location and use.
18235. Administration; other use permitted by Secretary.
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18237. Supervision of construction: compliance with State law.
18238. Army National Guard of United States; Air National Guard of United States: limitation on relocation of units.
18239. Waiver of certain restrictions.

§ 18231. Purpose

The purpose of this chapter is to provide for—

(1) the acquisition, by purchase, lease, transfer, construction, expansion, rehabilitation, or conversion of facilities necessary for the proper development, training, operation, and maintenance of the reserve components of the armed forces, including troop housing and messing facilities;

(2) the joint use of those facilities by units of two or more of those reserve components, to the greatest practicable extent for efficiency and economy;

(3) the use of those facilities, in time of war or national emergency, by those units and other units of the armed forces, to the greatest practicable extent for efficiency and economy; and

(4) any other use of those facilities by the United States, in time of war or national emergency, to the greatest practicable extent for efficiency and economy.

(Aug. 10, 1956, § 2231, ch. 1041, 70A Stat. 120; Aug. 29, 1957, P.L. 85–215, § 1, 71 Stat. 489; transferred and redesignated § 18231 P.L. 103–337, § 1664(b)(2), Oct. 5, 1994, 108 Stat. 3010.)

§ 18232. Definitions

In this chapter:

(1) The term "State" means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States and includes political subdivisions and military units thereof and tax-supported agencies therein.

(2) The term "facility" includes any (A) interest in land, (B) armory, readiness center, or other structure, and (C) storage or

other facility normally needed for the administration and training of any unit of the reserve components of the armed forces.

(3) The terms "armory" and "readiness center" mean a structure that houses one or more units of a reserve component and is used for training and administering those units. Such terms include a structure that is appurtenant to such a structure and houses equipment used for that training and administration.

(Aug. 10, 1956, § 2232, ch. 1041, 70A Stat. 121; Sept. 2, 1958, P.L. 85–861, § 1 (36), 72 Stat. 1456; July 12, 1982, P.L. 97–214, § 3(d)(1), 96 Stat. 170; April 21, 1987, P.L. 100–26, § 7(k)(2), 101 Stat. 284; transferred and redesignated § 18232 P.L. 103–337, § 1664(b)(2), Oct. 5, 1994, 108 Stat. 3010; amended P.L. 106–398, § 1[2807(a), (b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–415.)

§ 18233. Acquisition

(a) Subject to sections 18233a, 18234, 18235, 18236, and 18238 of this title and to subsection (c), the Secretary of Defense may—

(1) acquire by purchase, lease, or transfer, and construct, expand, rehabilitate, or convert and equip, such facilities as he determines to be necessary to carry out the purposes of this chapter;

(2) contribute to any State such amounts as he determines to be necessary to expand, rehabilitate, or convert facilities owned by it or by the United States for use jointly by units of two or more reserve components of the armed forces or to acquire or construct facilities for such use;

(3) contribute to any State such amounts as he determines to be necessary to expand, rehabilitate, or convert facilities owned by it (or to acquire, construct, expand, rehabilitate, or convert additional facilities) made necessary by the conversion, redesignation, or reorganization of units of the Army National Guard of the United States or the Air National Guard of the United States authorized by the Secretary of the military department concerned;

(4) contribute to any State such amounts for the acquisition, construction, expansion, rehabilitation, or conversion by it of additional facilities as he determines to be required by any increase in the strength of the Army National Guard of the United States or the Air National Guard of the United States;

(5) contribute to any State amounts for the acquisition, construction, expansion, rehabilitation, and conversion by such State of such additional facilities as the Secretary determines to be required because of the failure of existing facilities to meet the purposes of this chapter; and

(6) contribute to any State such amounts for the construction, alteration, or rehabilitation of critical portions of facilities as the Secretary determines to be required to meet a change in Department of Defense construction criteria or standards related to the execution of the Federal military mission assigned to the unit using the facility.

(b) Title to property acquired by the United States under subsection (a)(1) vests in the United States. Such property may be transferred to any State incident to the expansion, rehabilitation, or conversion of such property under subsection (a)(2) so long as

the transfer of such property does not result in the creation of an enclave owned by a State within a Federal installation.

(c) The Secretary of Defense may delegate any of his authority or functions under this chapter to any department, agency, or officer of the Department of Defense.

(d) The expenses of leasing property under subsection (a)(1) may be paid from appropriations available for the payment of rent.

(e) The Secretary of Defense may procure, or contribute to any State such amounts as the Secretary determines to be necessary to procure, architectural and engineering services and construction design in connection with facilities to be established or developed under this chapter which are not otherwise authorized by law.

(f)(1) Authority provided by law to construct, expand, rehabilitate, convert, or equip any facility under this section includes authority to expend funds for surveys, administration, overhead, planning, design, and supervision incident to any such activity.

(2) Authority to acquire real property under this section includes authority to make surveys and to acquire interests in land (including temporary interests) by purchase, gift, exchange of Government-owned land, or otherwise.

(Aug. 10, 1956, § 2233, ch. 1041, 70A Stat. 121; Aug. 20, 1958, P.L. 85–685, § 601(1), (2), 72 Stat. 664; Sept. 2, 1958, P.L. 85–861, § 1(37)–(39), 72 Stat. 1456; Nov. 26, 1979, P.L. 96–125, § 703, 93 Stat. 947; Dec. 23, 1981, P.L. 97–99, §§ 803, 804, 95 Stat. 1380, 1381; July 12, 1982, P.L. 97–214, §§ 3(a), (d)(2), (e)(1), 10(a)(2), 96 Stat. 169, 170, 175; Aug. 28, 1984, P.L. 98–407, § 703, 98 Stat. 1517; Oct. 19, 1984, P.L. 98–525, § 1405(34), 98 Stat. 2624; Dec. 3, 1985, P.L. 99–167, § 702(a), 99 Stat. 985; Dec. 5, 1991, P.L. 102–190, § 2801, 105 Stat. 1537; transferred, redesignated § 18233, and amended P.L. 103–337, § 1664(b)(2),(4), Oct. 5, 1994, 108 Stat. 3010; P.L. 106–65, § 2805, Oct. 5, 1999, 113 Stat. 850.)

§ 18233a. Limitation on certain projects; authority to carry out small projects with operation and maintenance funds

(a)(1) Except as provided in paragraph (2), an expenditure or contribution in an amount in excess of $1,500,000 may not be made under section 18233 of this title for any facility until the Secretary of Defense has notified the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives of the location, nature, and estimated cost of the facility and a period of 21 days has passed after receipt of such notification.

(2) Paragraph (1) does not apply to expenditures or contributions for the following:

(A) Facilities acquired by lease.

(B) A project for a facility that has been authorized by Congress, if the location and purpose of the facility are the same as when authorized and if, based upon bids received—

(i) the scope of work of the project, as approved by Congress, is not proposed to be reduced by more than 25 percent; and

(ii) the current working estimate of the cost of the project does not exceed the amount approved for the project by more than (I) 25 percent, or (II) 200 percent of the amount specified by section 2805(a)(2) of this title as the maximum amount for a minor military construction project, whichever is lesser.

(C) An unspecified minor military construction project (as defined in section 2805(a) of this title) that is intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening.

(b) Under such regulations as the Secretary of Defense may prescribe, the Secretary may spend, from appropriations available for operation and maintenance, amounts necessary to carry out any project authorized under section 18233(a) of this title costing not more than—

(1) the amount specified in section 2805(c)(1)(A) of this title, in the case of a project intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening; or

(2) the amount specified in section 2805(c)(1)(B) of this title, in the case of any other project.

(Added as § 2233a P.L. 85–685, § 601(3), Aug. 20, 1958, 72 Stat. 665; amended P.L. 87–554, § 701, July 27, 1962, 76 Stat. 243; P.L. 93–552, § 703, Dec. 27, 1974, 88 Stat. 1770; P.L. 94–107, § 703, Oct. 7, 1975, 89 Stat. 569; P.L. 96–125, § 704, Nov. 26, 1979, 93 Stat. 947; P.L. 97–214, § 3(c)(1), July 12, 1982, 96 Stat. 169; P.L. 98–115, § 702, Oct. 11, 1983, 97 Stat. 782; P.L. 98–407, § 702, Aug. 28, 1984, 98 Stat. 1517; P.L. 100–26, § 7(f)(1), April 21, 1987, 101 Stat. 281; P.L. 100–180, § 2304(a), Dec. 4, 1987, 101 Stat. 1215; P.L. 102–190, § 2804, Dec. 5, 1991, 105 Stat. 1537; transferred, redesignated § 18233a, and amended P.L. 103–337, § 1664(b)(2), (5), Oct. 5, 1994, 108 Stat. 3010; P.L. 104–106, § 1502(a)(10), Feb. 10, 1996, 110 Stat. 503; P.L. 104–201, § 2801(b), (c), Sept. 23, 1996, 110 Stat. 2787; P.L. 106–65, §§ 1067(1), 2806, Oct. 5, 1999, 113 Stat. 774, 850; P.L. 106–398, § 1[1087(a)(22)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291.)

§ 18234. Location and use

No expenditures or contribution may be made for a facility under section 18233 of this title, unless the Secretary of Defense determines that—

(1) the number of units of the reserve components of the armed forces located or to be located in the area within which the facility is to be provided is not and will not be larger than the number that can reasonably be expected to be maintained at authorized strength, considering the number of persons living in the area who are qualified for membership in those reserve units; and

(2) the plan under which the facility is to be provided makes provision for the greatest practicable use of the facility jointly by units of two or more of those components.

(Aug. 10, 1956, § 2234, ch. 1041, 70A Stat. 121; transferred, redesignated § 18234, and amended P.L. 103–337, § 1664(b)(2),(6), Oct. 5, 1994, 108 Stat. 3010.)

§ 18235. Administration; other use permitted by Secretary

(a) The Secretary of Defense, after consulting the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives on matters of policy, may—

(1) administer, operate, maintain, and equip facilities constructed, expanded, rehabilitated, or converted under section 18233 of this title or otherwise acquired and used for the purposes of this chapter;

(2) permit persons or organizations other than members and units of the armed forces to use those facilities under such leases or other agreements as he considers appropriate; and

(3) cover the payments received under those leases or agreements into the Treasury to the credit of the appropriation

from which the cost of maintaining the facility, including its utilities and services, is paid.

(b) The Secretary may not permit any use or disposition to be made of a facility covered by subsection (a) that would interfere with its use—

(1) for administering and training the reserve components of the armed forces; or

(2) in time of war or national emergency, by other units of the armed forces or by the United States for any other purpose.

(Aug. 10, 1956, § 2235, ch. 1041, 70A Stat. 122; transferred, redesignated § 18235, and amended P.L. 103–337, § 1664(b)(2),(7), Oct. 5, 1994, 108 Stat. 3010; P.L. 104–106, § 1502(a)(2), Feb. 10, 1996, 110 Stat. 502; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 18236. Contributions to States; other use permitted by States

(a) Contributions under section 18233 of this title are subject to such terms as the Secretary of Defense, after consulting the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, considers necessary for the purposes of this chapter. Except as otherwise agreed when the contribution is made, a facility provided by a contribution under paragraph (3) or (4) of section 18233(a) of this title may be used jointly by units of two or more reserve components of the armed forces only to the extent that the State considers practicable.

(b) A contribution made for an armory or readiness center under paragraph (4) or (5) of section 18233(a) of this title may not exceed the sum of—

(1) 100 percent of the cost of architectural, engineering and design services (including advance architectural, engineering and design services under section 18233(e) of this title); and

(2) a percentage of the cost of construction (exclusive of the cost of architectural, engineering and design services) calculated so that upon completion of construction the total contribution (including the contribution for architectural, engineering and design services) equals 75 percent of the total cost of construction (including the cost of architectural, engineering and design services).

For the purpose of computing the cost of construction under this subsection, the amount contributed by a State may not include the cost or market value of any real property that it has contributed.

(c) If a State acquires, constructs, expands, rehabilitates, or converts a facility with amounts contributed under section 18233 of this title, it may—

(1) permit persons or organizations other than members and units of the armed forces to use the facility under such leases or other agreements as it considers appropriate; and

(2) apply amounts received under those leases or agreements to the cost of maintaining the facility.

(d) Except as otherwise agreed when the contribution is made, and except as the agreement is later changed, a State may not permit any use or disposition of the facility that would interfere with its use—

(1) for administering and training the reserve components of the armed forces; or

(2) in time of war or national emergency, by other units of the armed forces or by the United States for any other purpose.

(Aug. 10, 1956, § 2236, ch. 1041, 70A Stat. 122; Sept. 2, 1958, P.L. 85–861, § 1(40), 72 Stat. 1456; July 12, 1982, P.L. 97–214, § 3(d)(2), (3), (e)(2), 96 Stat. 170; Dec. 3, 1985, P.L. 99–167, § 702(b), 99 Stat. 985; Nov. 14, 1986, P.L. 99–661, § 1343(a)(11), 100 Stat. 3993; transferred, redesignated § 18236, and amended P.L. 103–337, § 1664(b)(2),(8), Oct. 5, 1994, 108 Stat. 3010, 3011; P.L. 104–106, §§ 1501(b)(36), 1502(a)(2), Feb. 10, 1996, 110 Stat. 498, 502; P.L. 106–65, § 1067(1), Oct. 5, 1999, 113 Stat. 774; P.L. 106–398, § 1[2807(b)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–415.)

§ 18237. Supervision of construction: compliance with State law

(a) Any construction, expansion, rehabilitation, or conversion under section 18233(a)(1) of this title may be performed under the supervision of the Chief of Engineers of the Army or the head of such office or agency in the Department of the Navy as the Secretary of the Navy may designate.

(b) The construction, expansion, rehabilitation, or conversion of facilities in a State under paragraph (2), (3), (4), (5), or (6) of section 18233(a) of this title shall be done according to the laws of that jurisdiction and under the supervision of its officials, subject to the inspection and approval of the Secretary of Defense.

(Aug. 10, 1956, § 2237, ch. 1041, 70A Stat. 123; Sept. 2, 1958, P.L. 85–861, § 1(41), 72 Stat. 1457; Nov. 2, 1966, P.L. 89–718, § 19, 80 Stat. 1118; July 12, 1982, P.L. 97–214, § 3(d)(2), 96 Stat. 170; transferred, redesignated § 18237, and amended P.L. 103–337, §§ 1664(b)(2), 2852, Oct. 5, 1994, 108 Stat. 3010, 3072; P.L. 104–106, § 1501(b)(37), Feb. 10, 1996, 110 Stat. 498.)

§ 18238. Army National Guard of United States; Air National Guard of United States: limitation on relocation of units

A unit of the Army National Guard of the United States or the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State or, in the case of the District of Columbia, the commanding general of the National Guard of the District of Columbia.

(Aug. 10, 1956, § 2238, ch. 1041, 70A Stat. 123; Sept. 2, 1958, P.L. 85–861, § 1(43), 72 Stat. 1457; July 12, 1982, P.L. 97–214, § 3(d)(4), 96 Stat. 170; transferred and redesignated § 18238 P.L. 103–337, § 1664(b)(2), Oct. 5, 1994, 108 Stat. 3010.)

§ 18239. Waiver of certain restrictions

(a) The Secretary of Defense and the Secretary of each military department may make expenditures and contributions under section 18233 of this title without regard to section 3324(a) and (b) of title 31.

(b) Authority provided by law to place permanent or temporary improvements on land under section 18233 of this title may be exercised on land not owned by the United States—

(1) before title to the land on which the improvement is located (or is to be located) is approved under section 355 of the Revised Statutes (40 U.S.C. 255); 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.

(Added as § 2239 P.L. 97–214, § 3(b)(1), July 12, 1982, 96 Stat. 169; amended P.L. 97–295, § 1(23), Oct. 12, 1982, 96 Stat. 1290; P.L. 97–321, § 805(a)(2), Oct. 15, 1982, 96 Stat. 1573; transferred, redesignated § 18239, and amended P.L. 103–337, § 1664(b)(2),(11), Oct. 5, 1994, 108 Stat. 3010, 3011.)

CHAPTER 1805—MISCELLANEOUS PROVISIONS

Sec.
18501. Reserve components: personnel and logistic support by military departments.
18502. Reserve components: supplies, services, and facilities.
18505. Reserves traveling for annual training duty or inactive-duty training: space-required travel on military aircraft.

§ 18501. Reserve components: personnel and logistic support by military departments

The Secretary concerned is responsible for providing the personnel, equipment, facilities, and other general logistic support necessary to enable units and Reserves in the Ready Reserve of the reserve components under his jurisdiction to satisfy the training requirements and mobilization readiness requirements for those units and Reserves as recommended by the Secretary concerned and by the Chairman of the Joint Chiefs of Staff and approved by the Secretary of Defense, and as recommended by the Commandant of the Coast Guard and approved by the Secretary of Transportation when the Coast Guard is not operated as a service of the Navy.

(Added P.L. 103–337, § 1664(c)(1), Oct. 5, 1994, 108 Stat. 3011 [derived from § 264(a)].)

§ 18502. Reserve components: supplies, services, and facilities

(a) The Secretary concerned shall make available to the reserve components under his jurisdiction the supplies, services, and facilities of the armed forces under his jurisdiction that he considers necessary to support and develop those components.

(b) Whenever he finds it to be in the best interest of the United States, the Secretary concerned may issue supplies of the armed forces under his jurisdiction to the reserve components under his jurisdiction, without charge to the appropriations for those components for the cost or value of the supplies or for any related expense.

(c) Whenever he finds it to be in the best interest of the United States, the Secretary of the Army or the Secretary of the Air Force may issue to the Army National Guard or the Air National Guard, as the case may be, supplies of the armed forces under his jurisdiction that are in addition to supplies issued to that National Guard under section 702 of title 32 or charged against its appropriations under section 106 or 107 of title 32, without charge to the appropriations for those components for the cost or value of the supplies or for any related expense.

(d) Supplies issued under subsection (b) or (c) may be repossessed or redistributed as prescribed by the Secretary concerned.

(Added P.L. 103–337, § 1664(c)(1), Oct. 5, 1994, 108 Stat. 3012 [derived from § 2540].)

§ 18505. Reserves traveling for annual training duty or inactive-duty training: space-required travel on military aircraft

(a) A member of a reserve component traveling for annual training duty or inactive-duty training (including a place other than the place of the member's unit training assembly if the member is performing annual training duty or inactive-duty training in another location) may travel in a space-required status on aircraft of the armed forces between the member's home and the place of the annual training duty or inactive-duty training.

(b) A member traveling in a space-required status on any such aircraft under subsection (a) is not authorized to receive travel, transportation, or per diem allowances in connection with that travel.

(Added P.L. 106–65, § 517(a)(1), Oct. 5, 1999, 113 Stat. 594; amended P.L. 106–398, § 1[384(a), (b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–87.)

LAWS PROVIDING THAT CERTAIN PROVISIONS OF TITLE 10 ARE APPLICABLE TO THE COMMISSIONED CORPS OF THE PUBLIC HEALTH SERVICE AND THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

1. SECTION 221 OF THE PUBLIC HEALTH SERVICE ACT

(42 U.S.C. 213a)

RIGHTS, PRIVILEGES, ETC. OF OFFICERS AND SURVIVING BENEFICIARIES

SEC. 221. (a) Commissioned officers of the Service or their surviving beneficiaries are entitled to all the rights, benefits, privileges, and immunities now or hereafter provided for commissioned officers of the Army or their surviving beneficiaries under the following provisions of title 10, United States Code:

(1) Section 1036, Escorts for dependents of members: transportation and travel allowances.

(2) Chapter 61, Retirement or Separation for Physical Disability, except that sections 1201, 1202, and 1203 do not apply to commissioned officers of the Public Health Service who have been ordered to active duty for training for a period of more than 30 days.

(3) Chapter 69, Retired Grade, except sections 1370, 1374, 1375, and 1376(a).

(4) Chapter 71, Computation of Retired Pay, except formula No. 3 of section 1401.

(5) Chapter 73, Retired Serviceman's Family Protection Plan, Survivor Benefit Plan.

(6) Chapter 75, Death Benefits.

(7) Section 2771, Final settlement of accounts: deceased members.

(8) Chapter 163, Military Claims, but only when commissioned officers of the Service are entitled to military benefits under section 212 of this Act.

(9) Section 2603, Acceptance of fellowships, scholarships, or grants.

(10) Section 2634 Motor vehicles: for members on permanent change of station.

(11) Section 1035, Deposit of savings.

(12) Section 1552, Correction of military records: claims incident thereto.

(13) Section 1553, Review of discharge or dismissal.

(14) Section 1554, Review of retirement or separation without pay for physical disability.

(15) Section 1124, Cash awards for suggestions, inventions, or scientific achievements.

(16) Section 1052, Reimbursement for adoption expenses.

(b) The authority vested by title 10, United States Code, in the "military departments", "the Secretary concerned", or "the Secretary of Defense" with respect to the rights, privileges, immunities, and benefits referred to in subsection (a) shall be exercised, with respect to commissioned officers of the Service, by the Secretary of Health, Education, and Welfare or his designee.

2. SECTION 3 OF THE ACT OF AUGUST 10, 1956

(33 U.S.C. 857a)

SEC. 3. (a) The rules of law that apply to the Armed Forces under the following provisions of title 10, Armed Forces, United States Code, as those provisions are in effect from time to time, apply also to the commissioned officer corps of the National Oceanic and Atmospheric Administration:

(1) Section 1036, Escorts for dependents of members: transportation and travel allowances.

(2) Chapter 61, Retirement or Separation for Physical Disability.

(3) Chapter 69, Retired Grade, except sections 1370, 1375, and 1376(a).

(4) Chapter 71, Computation of Retired Pay, except formula No. 3 of section 1401.

(5) Chapter 73, Retired Serviceman's Family Protection Plan; Survivor Benefit Plan.

(6) Chapter 75, Death Benefits.

(7) Section 2771, Final settlement of accounts: deceased members.

(8) Sections 2731, 2732, and 2735, property loss incident to service.

(9) Such other provisions of subtitle A as may be adopted for applicability to the commissioned officer corps of the National Oceanic and Atmospheric Administration by any other provision of law.

(10) Chapter 40. Leave.

(11) Section 2634, Motor vehicles: for members on permanent change of station.

(12) Section 1035, Deposits of Savings.

(13) Section 716, Commissioned officers: transfers between armed forces and to and from National Oceanic and Atmospheric Administration.

(14) Section 7572(b), Quarters: accommodations in place of for members on sea duty.

(15) Section 1174a, special separation benefits (except that benefits under subsection (b)(2)(B) of such section are subject to the availability of appropriations for such purpose and are provided at the discretion of the Secretary of Commerce).

(16) Section 1052, Reimbursement for adoption expenses.

(b) The authority vested by title 10, United States Code, in the "military departments", "the Secretary concerned", or "the Secretary of Defense" with respect to the provisions of law referred to in subsection (a) shall be exercised, with respect to the commissioned officer corps of the National Oceanic and Atmospheric Administration, by the Secretary of Commerce or his designee.

EXECUTIVE ORDERS

1. EXECUTIVE ORDERS DELEGATING MISCELLANEOUS FUNCTIONS OF THE PRESIDENT UNDER TITLE 10

(3 U.S.C. 301 note)

EX. ORD. NO. 13000. ORDER OF SUCCESSION OF OFFICERS TO ACT AS SECRETARY OF DEFENSE

Ex. Ord. No. 13000, April 24, 1996, provides:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 3347 of title 5, United States Code, it is hereby ordered as follows:

SECTION 1. *Succession to Act as the Secretary of Defense.*

(a) In the event of the death, permanent disability, or resignation of the Secretary of Defense, the incumbents holding the Department of Defense positions designated below, in the order indicated, shall act for and exercise the powers of the Secretary of Defense as Acting Secretary of Defense:

(1) Deputy Secretary of Defense.

(2) Secretary of the Army.

(3) Secretary of the Navy.

(4) Secretary of the Air Force.

(5) Under Secretary of Defense for Acquisition and Technology.

(6) Under Secretary of Defense for Policy.

(7) Under Secretary of Defense (Comptroller).

(8) Under Secretary of Defense for Personnel and Readiness.

(9) Deputy Under Secretary of Defense for Acquisition and Technology.

(10) Deputy Under Secretary of Defense for Policy.

(11) Director of Defense Research and Engineering.

(12) The Assistant Secretaries of Defense, the Director of Operational Test and Evaluation, and the General Counsel of the Department of Defense, in the order fixed by their length of service as permanent appointees in such positions.

(13) Under Secretaries of the Army, the Navy, and the Air Force, in the order fixed by their length of service as permanent appointees in such positions.

(14) Assistant Secretaries of the Army, the Navy, and the Air Force whose appointments are vested in the President, and General Counsels of the Army, the Navy, and the Air Force,

in the order fixed by their length of service as permanent appointees in such positions.

(b) In the event of the temporary absence or temporary disability of the Secretary of Defense, the incumbents holding the Department of Defense positions designated in paragraph (a) of this section, in the order indicated, shall act for and exercise the powers of the Secretary of Defense as Acting Secretary of Defense.

(1) In these instances, the designation of an Acting Secretary of Defense applies only for the duration of the Secretary's absence or disability, and does not affect the authority of the Secretary to resume the powers of his office upon his return.

(2) In the event that the Secretary of Defense is temporarily absent from his position, the Secretary may continue to exercise the powers and fulfill the duties of this office during his absence, notwithstanding the provisions of this order.

(c) Precedence among those officers designated in paragraphs (a) (12)–(14) of this section who have the same appointment date shall be determined by the Secretary of Defense at the time that such appointments are made.

(d) Notwithstanding paragraphs (a) and (b) of this section, an officer shall not act for or exercise the powers of the Secretary of Defense under this order if that officer serves only in an acting capacity in the position that would otherwise entitle him to do so.

SEC. 2. *Temporary Nature of Succession.*

Succession to act for and exercise the powers of the Secretary of Defense pursuant to this order shall be on a temporary or interim basis and shall not have the effect of vacating the statutory appointment held by the successor.

SEC. 3. *Revocation of Prior Executive Order.*

Executive Order No. 12787 of December 31, 1991, is hereby revoked.

EX. ORD. NO. 12396. DELEGATION OF FUNCTIONS TO SECRETARY OF DEFENSE—DEFENSE OFFICER PERSONNEL MANAGEMENT

Ex. Ord. No. 12396, Dec. 9, 1982, 47 F.R. 55897, provides:

By the authority vested in me as President of the United States of America by Section 301 of Title 3 of the United States Code, and in order to delegate certain functions concerning the appointment, promotion, and retirement of commissioned officers of the Armed Forces, it is hereby ordered as follows:

SECTION 1. The Secretary of Defense is designated to perform, without approval, ratification, or other action by the President, the following functions vested in the President:

(a) The authority vested in the President by Sections 618(b)(1) and 628(d)(1) of Title 10 of the United States Code, to approve, modify, or disapprove the report of a selection board.

(b) The authority vested in the President by Section 629(a) of Title 10 of the United States Code, to remove the name of any officer from a promotion list to any grade below commodore or brigadier general.

(c) The authority vested in the President by Section 624(c) of Title 10 of the United States Code, to appoint officers in the grades of first lieutenant and captain in the Army, Air Force, and Marine

Corps or in the grades of lieutenant (junior grade) and lieutenant in the Navy.

(d) The authority vested in the President by Section 5721(c) of Title 10 of the United States Code, to make certain temporary appointments to the grade of lieutenant commander.

(e) The authority vested in the President by Section 6323(a) of Title 10 of the United States Code, to approve the application of an officer of the Navy or the Marine Corps for retirement after the completion of more than 20 years of active service and to designate the month in which such retirements shall become effective.

(f) The authority vested in the President by Sections 3918 and 8918 of Title 10 of the United States Code, to approve the request of a regular commissioned officer of the Army or the Air Force to retire after at least 30 years of service.

(g) Nothing in this Section shall be deemed to delegate the authority vested in the President by Section 618(c) of Title 10 to remove a name from a selection board report.

SEC. 2. (a) The Secretary of Defense is designated to perform during a time of war or national emergency the following functions vested in the President, without the approval, ratification, or other action by the President.

(1) The authority vested in the President by Section 526 of Title 10 of the United States Code, to suspend the operation of any provision of Sections 523, 524, or 525 of Title 10 of the United States Code, relating to the authorized strength of commissioned officers.

(2) The authority vested in the President by subsections (a) and (b) of Section 603 of Title 10 of the United States Code, to make or vacate certain temporary commissioned appointments.

(3) The authority vested in the President by Section 644 of Title 10 of the United States Code, to suspend the operation of any law relating to the promotion, involuntary retirement, or separation of commissioned officers of the Army, Navy, Air Force, or Marine Corps.

(b) The authority delegated to the Secretary of Defense by this Section may not be exercised during the time of a national emergency declared by the President, unless the exercise of any such authority is specifically directed by the President in accordance with Section 301 of the National Emergencies Act (50 U.S.C. 1631).

(c) The Secretary of Defense shall ensure that actions taken pursuant to the authority delegated by this Section are accounted for as required by Section 401 of the National Emergencies Act (50 U.S.C. 1641).

SEC. 3. The authority delegated to the Secretary of Defense by this Order may be redelegated to the Deputy Secretary of Defense, any of the Assistant Secretaries of Defense, and to any of the Secretaries of the military departments who may further subdelegate such authority to subordinates who are appointed to their office by the President with the advice and consent of the Senate.

SEC. 4. All actions taken by, for, or on behalf of the President with respect to the functions delegated by this Order, which actions would be valid if taken pursuant to this Order, are ratified.

SEC. 5. (a) Executive Order No. 10621, as amended [set out above], is further amended by revoking subsections (g), (h), (j), (k), (*l*), (m), and (n) of Section 1 thereof.

(b) Executive Order No. 11390, as amended [set out above], is further amended by revoking subsections 2, 3, 9, 12, and 15 of Section 1 thereof.

(c) Executive Order No. 12239 is revoked.

EX. ORD. NO. 11609. DELEGATION OF CERTAIN FUNCTIONS VESTED IN THE PRESIDENT TO OTHER OFFICERS OF THE GOVERNMENT

Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, as amended provides:

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

[Sections 1–4 omitted]

SEC. 5. *Department of Defense.* The Secretary of Defense is hereby designated and empowered to exercise the authority of the President under the last sentence of section 4 of the Act of May 10, 1943, c. 95, 57 Stat. 81 (24 U.S.C. 34) to prescribe from time to time uniform rates of charges for hospitalization and dispensary services: *Provided,* That the authority hereby delegated may not be redelegated to any officer in the Department of the Navy, Department of the Air Force, or Department of the Army.

SEC. 6. *Department of Health, Education, and Welfare; Department of Defense.* The following are hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority of the President under 10 U.S.C. 1085 to establish uniform rates of reimbursement for inpatient medical or dental care:

(1) The Secretary of Health, Education, and Welfare [now Secretary of Health and Human Services] in respect of such care in a facility under his jurisdiction.

(2) The Secretary of Defense in respect of such care in a facility of an armed force under the jurisdiction of a military department.

[Sections 7 and 8 omitted]

SEC. 9. *Office of Management and Budget.* The Director of the Office of Management and Budget is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

(1) The authority of the President under 5 U.S.C. 5911(f) to issue the regulations provided for therein (relating to the provision, occupancy, and availability of quarters and facilities, the determination of rates and charges therefor, and other related matters, as are necessary and appropriate to carry out the provision of section 5911).

(2) The authority of the President under 10 U.S.C. 126(a) to approve the transfers of balances of appropriations provided for therein.

[Paragraphs (3)–(8) omitted.]

[Sections 10–12 omitted.]

EX. ORD. NO. 11390. DELEGATION OF FUNCTIONS TO SECRETARY OF DEFENSE

Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, as amended, provides:

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. The Secretary of Defense, and, as designated by the said Secretary for this purpose, any of the Secretaries, Under Secretaries, and Assistant Secretaries of the military departments, are hereby designated and empowered to perform the following-described functions of the President without the approval, ratification, or other action of the President:

(1) [Revoked by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617.]

(2), (3) [Revoked by Ex. Ord. No. 12396, Dec. 9, 1982, 47 F.R. 55897.]

(4) The authority vested in the President by sections 565, 599, 3450, and 8450 of title 10, United States Code [sections 569, 599, 3449, 5787(c), and 8449 of title 10], to suspend, in time of war or emergency, any provision of law relative to promotion and mandatory retirement or separation of warrant officers of the armed forces.

(5) The authority vested in the President by sections 4337 and 9337 of title 10, United States Code, to appoint the chaplains at the United States Military and Air Force Academies.

(6) The authority vested in the President by sections 4302(a) and 9302(a) of title 10, United States Code, to approve regulations concerning instruction of enlisted members of the Army and Air Force.

(7)[Revoked by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617.]

(8) The authority vested in the President by sections 5139 and 5149 of title 10, United States Code, relating to the retirement of the Chief of the Medical Service Corps, the Deputy Judge Advocate General, and the Assistant Judge Advocate General, of the Navy.

(9) [Revoked by Ex. Ord. No. 12396, Dec. 9, 1982, 47 F.R. 55897.]

(10) The authority vested in the President by section 2102(a) of title 10, United States Code to prescribe regulations governing the establishment and maintenance of senior reserve officers' Training Corps units at civilian educational institutions.

(11) The authority vested in the President by section 123 of title 10, and section 111 of title 32, United States Code, to suspend in time of war or national emergency those provisions cited therein relating to promotion of reserve officers.

(12) [Revoked by Ex. Ord. No. 12396, Dec. 9, 1982, 47 F.R. 55897.]

(13) The authority vested in the President by section 6223(b) of title 10, United States Code, relating to members of the Marine Corps Band.

(14) The authority vested in the President by section 425 of title 37, United States Code, to approve concert tours of the Navy Band and the Marine Corps Band.

(15) [Revoked by Ex. Ord. No. 12396, Dec. 9, 1982, 47 F.R. 55897.]

SEC. 2. All actions heretofore taken by or for the President with respect to the matters affected by this order and in force and effect at the time of the issuance of this order, including any regulations prescribed or approved by the President with respect to such matters, shall, except as they may be inconsistent with the provisions of this order, remain in force and effect until amended, modified, or revoked pursuant to the authority conferred by this order.

EX. ORD. NO. 10621. DELEGATION OF FUNCTIONS TO SECRETARY OF DEFENSE

Ex. Ord. No. 10621, July 1, 1955, 20 F.R. 4759, as amended provides:

SECTION 1. The Secretary of Defense, and, as designated by the said Secretary for this purpose, any of the Secretaries, Under Secretaries, and Assistant Secretaries of the military departments, are hereby designated and empowered to perform the following-described functions of the President without the approval, ratification, or other action of the President:

(a) The authority vested in the President by the act of March 3, 1901, ch. 852, 31 Stat. 1107, 1133 [see former section 5941 and section 7291 of title 10], to establish and modify, as the needs of the service may require, a classification of vessels of the Navy, and to formulate appropriate rules governing assignments to command of vessels and squadrons.

(b) The authority vested in the President by the act of August 22, 1912, ch. 335, 37 Stat. 382, 331 [see sections 509 and 1171 of title 10], to approve regulations of the Secretary of the Navy under which any enlisted man may be discharged within three months before the expiration of the term of his enlistment, and under which an enlisted man may voluntarily extend the term of his enlistment.

(c) The authority vested in the President by the act of May 22, 1928, ch. 688, 45 Stat. 712 [section 6152 of title 10], to approve regulations governing the advancement of public funds to naval personnel when required to meet expenses of officers and men detailed on emergency shore duty.

(d) The authority vested in the President by the act of June 22, 1938, ch. 567, 52 Stat. 839 as amended [sections 5083, 5133, 5148, and 5201 of title 10], section 201(a) of the act of August 25, 1941, ch. 409, 55 Stat. 680 [sections 5063 and 5064 of title 10], section 3 of the act of December 28, 1945, ch 604, 59 Stat. 666, as amended [section 5138 of title 10], section 2 of the act of August 1, 1946, ch. 727, 60 Stat. 779 [section 5150 of title 10], and section 7(a) of the act of March 5, 1948, ch. 98, 62 Stat. 68 [see Department of Defense Reorganization Order set out as a note under former section 5111 of title 10], to authorize, in his discretion, for any officer of the Regular Navy or Marine Corps who retires while serving as

Chief of Naval Operations, as Chief of a Bureau of the Navy Department, as Judge Advocate General of the Navy, as Commandant of the Marine Corps, as Director of Budgets and Reports, as Chief of the Dental Division, as Chief of Naval Research, or as Chief of Naval Material, or while serving in a lower rank if he has previously served in any of such offices two and one-half years or more, retirement in the highest grade or rank in which he so served and with retired pay based on that rank.

(e) The authority vested in the President by the act of June 15, 1940, ch. 374, 54 Stat. 400, to prescribe from time to time the number of warrant and commissioned warrant officers for the Marine Corps.

(f) The authority vested in the President by the act of June 24, 1941, ch. 231, 55 Stat. 260 [section 7306 of title 10], to approve the use for experimental purposes of vessels of the United States Navy stricken from the Navy Register pursuant to the act of August 5, 1882, 22 Stat. 296, as amended [section 7304 of title 10].

(g) The authority vested in the President by section 302 of the act of June 22, 1944, ch. 268, 58 Stat. 287 [see section 1554 of title 10], to approve or disapprove the proceedings and decisions of boards of review established under that section by the Secretary of the Army, the Secretary of the Air Force, or the Secretary of the Navy, and to issue orders in such cases.

(h) The authority vested in the President by Section 102(a) of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985, 5 U.S.C. 5702(a), to establish maximum rates of per diem allowances and reimbursements for the actual and necessary expenses of official travel for employees of the Government to the extent that such authority pertains to travel status in localities in Alaska, Hawaii, the Commonwealth of Puerto Rico, and possessions of the United States.

(i) [Redesignated as subsection (g) by Exec. Ord. No. 12561, July 1, 1986.]

(j) to (n) [Revoked by Ex. Ord. No. 12396, Dec. 9, 1982, 47 F.R. 55897.]

(o) [Revoked by Ex. Ord. No. 12561, July 1, 1986.]

SEC. 2. The Secretary of Defense, and, as designated by the said Secretary for this purpose, the Deputy Secretary of Defense and any of the Assistant Secretaries of Defense, are hereby designated and empowered to perform the following-described functions of the President without the approval, ratification, or other action of the President:

(a) The authority vested in the President by section 1547 of the Revised Statutes of the United States [section 6011 of title 10], to approve alterations made by the Secretary of the Navy in Navy Regulations.

(b) The authority vested in the President by section 1 of the act of April 9, 1906, ch. 1370, 34 Stat. 104 [section 6961 of title 10], to approve the dismissal by the Secretary of the Navy of a midshipman from the United States Naval Academy.

SEC. 3. All actions heretofore taken by the President with respect to the matters affected by this order and in force and effect at the time of the issuance of this order, including any regulations prescribed or approved by the President with respect to such mat-

ters, shall, except as they may be inconsistent with the provisions of this order, remain in force and effect until amended, modified, or revoked pursuant to the authority conferred by this order.

SEC. 4. As used in this order, the term "functions" includes duties, powers, responsibilities, authority, and discretion, and the term "perform" may be construed to mean "exercise".

2. EXECUTIVE ORDERS ISSUED IN CONNECTION WITH CERTAIN CONFLICTS OR THEATERS OF OPERATIONS

A. Southwest Asia Theater of Operations

EX. ORD. NO. 13076. ORDERING SELECTED RESERVE OF ARMED FORCES TO ACTIVE DUTY

(FEBRUARY 24, 1998)

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 121 and 12304 of title 10, United States Code, I hereby determine that it is necessary to augment the active armed forces of the United States for the effective conduct of operations in and around Southwest Asia. Further, under the stated authority, I hereby authorize the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, to order to active duty any units, and any individual members not assigned to a unit organized to serve as a unit, of the Selected Reserve.

This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

EX. ORD. NO. 12771. REVOKING EARLIER ORDERS WITH RESPECT TO KUWAIT

(JULY 25, 1991)

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 301 of title 3 of the United States Code, and the United Nations Participation Act (22 U.S.C. 287c).

I GEORGE BUSH, President of the United States of America, find that the expulsion from Kuwait of Iraq's occupation forces, the restoration of Kuwait to its citizens, and the reinstatement of the lawful Government of Kuwait eliminate the need for Executive Order No. 12723 of August 2, 1990, entitled "Blocking Kuwaiti Government Property," and Executive Order No. 12725 of August 9, 1990, entitled "Blocking Kuwaiti Government Property and Prohibiting Transactions With Kuwait." Those orders were issued to protect the assets of the Government of Kuwait which were subject

to United States jurisdiction, and to prevent the transfer of benefits by United States persons to Iraq based upon its invasion of Kuwait. Those orders also implemented the foreign policy and protected the national security of the United States, in conformity with applicable resolutions of the United Nations Security Council. Finding continuation of these orders unnecessary, I hereby order:

SECTION 1. Executive Order No. 12723 and Executive Order No. 12725 are hereby revoked. This revocation shall not affect the national emergency declared in Executive Order No. 12722 to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by the policies and action of the Government of Iraq.

SEC. 2. This revocation shall not affect:

(a) any action taken or proceeding pending and not finally concluded or determined on the effective date of this order;

(b) any action or proceeding based on any act committed prior to the effective date of this order; or

(c) any rights or duties that matured or penalties that were incurred prior to the effective date of this order.

SEC. 3. This order shall take effect immediately.

EX. ORD. NO. 12744. DESIGNATION OF ARABIAN PENINSULA AREAS, AIRSPACE, AND ADJACENT WATERS AS A COMBAT ZONE

(JANUARY 21, 1991)

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 112 of the Internal Revenue Code of 1986 (26 U.S.C. 112), I hereby designate, for purposes of that section the following locations, including the airspace above such locations, as an area in which Armed Forces of the United States are and have been engaged in combat:

—the Persian Gulf

—the Red Sea

—the Gulf of Oman

—that portion of the Arabian Sea that lies north of 10 degrees north latitude and west of 68 degrees east longitude

—the Gulf of Aden

—the total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and the United Arab Emirates.

For the purposes of this order, the date of the commencing of combatant activities in such zone is hereby designated as January 17, 1991.

EX. ORD. NO. 12743. ORDERING THE READY RESERVE OF THE ARMED FORCES TO ACTIVE DUTY

(JANUARY 18, 1991)

By the authority vested in me as President by the Constitution and 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 of the United States Code; in furtherance of Executive Order No. 12722, dated August 2, 1990, which declared a national emergency

to address the threat to the national security and foreign policy of the United States posed by the invasion of Kuwait by Iraq; and, in accordance with the requirements contained in section 301 of the National Emergencies Act, 50 U.S.C. 1631, I hereby order as follows:

SECTION 1. To provide additional authority to the Department of Defense and the Department of Transportation to respond to the continuing threat posed by Iraq's invasion of Kuwait, the authority under section 673 of title 10, United States Code, to order any unit, and any member not assigned to a unit organized to serve as a unit, in the Ready Reserve to active duty (other than for training) for not more than 24 consecutive months, is invoked and made available, according to its terms, to the Secretary concerned, subject, in the case of the Secretaries of the Army, Navy, and Air Force, to the direction of the Secretary of Defense. The term "Secretary concerned" is defined in section 101(8) of title 10, United States Code, to mean the Secretary of the Army with respect to the Army; the Secretary of the Navy with respect to the Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Navy; the Secretary of the Air Force with respect to the Air Force; and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

SEC. 2. To allow for the orderly administration of personnel within the armed forces, the authority vested in the President by section 527 of title 10, United States Code, to suspend the operation of sections 523–526 of title 10, United States Code, regarding officer strength and officer distribution in grade, is invoked to the full extent provided by the terms thereof.

SEC. 3. To allow the orderly administration of personnel within the armed forces, the authority vested in the President by section 644 of title 10, United States Code, to suspend the operation of any provision of law relating to the promotion, involuntary retirement, or separation of commissioned officers of the Army, Navy, Air Force, or Marine Corps, is invoked to the full extent provided by the terms thereof.

SEC. 4. The Secretary of Defense is hereby designated and empowered, without the approval, ratification, or other action by the President, to exercise the authority vested in the President by sections 527 and 644 of title 10, United States Code, as invoked by sections 2 and 3 of this order, to suspend the operation of certain provisions of law.

SEC. 5. The authorities delegated by sections 1 and 4 of this order may be redelegated and further subdelegated to civilian subordinates who are appointed to their offices by the President, by and with the advice and consent of the Senate.

SEC. 6. This order is intended to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

SEC. 7. This order is effective immediately, and shall be transmitted to the Congress and published in the Federal Register.

EX. ORD. NO. 12742. NATIONAL SECURITY INDUSTRIAL RESPONSIVENESS

(JANUARY 8, 1991)

By the authority vested in me as President by the Constitution and laws of the United States of America, including 50 U.S.C. App. 468, 10 U.S.C. 4501 and 9501, and 50 U.S.C. 82, it is hereby ordered as follows:

SECTION 101. *Policy.* The United States must have the capability to rapidly mobilize its resources in the interest of national security. Therefore, to achieve prompt delivery of articles, products, and materials to meet national security requirements, the Government may place orders and require priority performance of these orders.

SEC. 102. *Delegation of Authority under 50 U.S.C. App. 468.*

(a) Subject to paragraph (b) of this section, the authorities vested in the President, under 50 U.S.C. App. 468, with respect to the placing of orders for prompt delivery of articles or materials, except for the taking authority under 50 U.S.C. App. 468(c), are hereby delegated to:

(1) the Secretary of Agriculture with respect to all food resources;

(2) the Secretary of Energy with respect to all forms of energy;

(3) the Secretary of Transportation with respect to all forms of civil transportation; and

(4) the Secretary of Commerce with respect to all other articles and materials, including construction materials.

The authorities delegated by paragraph (a) of this section shall be exercised only after:

(1) a determination by the Secretary of Defense that prompt delivery of the articles or materials for the exclusive use of the armed forces of the United States is in the interest of national security, or

(2) a determination of the Secretary of Energy that the prompt delivery of the articles or materials for the Department of Energy's atomic energy programs is in the interest of national security.

(c) All determinations of the type described in paragraph (b) of this section and all delegations—made prior to the effective date of this order under the Defense Production Act of 1950, as amended, and under its implementing rules and regulations—shall be continued in effect, including but not limited to approved programs listed under the Defense Priorities and Allocations System (15 CFR Part 700).

SEC. 103. *Delegation of Authority under 10 U.S.C. 4501 and 9501, and 50 U.S.C. 82.*

(a) Subject to paragraph (b) of this section, the authorities vested in the President under 10 U.S.C. 4501 and 9501 with respect to the placing of orders for necessary products or materials, and under 50 U.S.C. 82 with respect to the placing of orders for ships or war materials, except for the taking authority vested in the President by these acts, are hereby delegated to:

(1) the Secretary of Agriculture with respect to all food resources;

(2) the Secretary of Energy with respect to all forms of energy;

(3) the Secretary of Transportation with respect to all forms of civil transportation; and

(4) the Secretary of Commerce with respect to all other products and materials, including construction materials.

(b) The authorities delegated in paragraph (a) of this section may be exercised only after the President has made the statutorily required determination.

SEC. 104. *Implementation.* (a) The authorities delegated under sections 102 and 103 of this order shall include the power to redelegate such authorities, and the power of successive redelegation of such authorities, to departments and agencies, officers, and employees of the Government. The authorities delegated in this order may be implemented by regulations promulgated and administered by the Secretaries of Agriculture, Defense, Energy, Transportation, and Commerce, and the Director of the Federal Emergency Management Agency as appropriate.

(b) All departments and agencies delegated authority under this order are hereby directed to amend their rules and regulations as necessary to reflect the new authorities delegated herein that are to be relied upon to carry out their functions. To the extent authorized by law, including 50 U.S.C. App. 486, 10 U.S.C. 4501 and 9501, and 50 U.S.C. 82, all rules and regulations issued under the Defense Production Act of 1950, as amended, with respect to the placing of priority orders for articles, products, ships, and materials, including war materials, shall be deemed, where appropriate, to implement the authorities delegated by sections 102 and 103 of this order, and shall remain in effect until amended or revoked by the respective Secretary. All orders, regulations, and other forms of administrative actions purported to have been issued, taken, or continued in effect pursuant to the Defense Production Act of 1950, as amended, shall until amended or revoked by the respective Secretaries or the Director of the Federal Emergency Management Agency, as appropriate, remain in full force and effect, to the extent supported by any law or any authority delegated to the respective Secretary or the Director pursuant to this order.

(c) Upon the request of the Secretary of Defense with respect to particular articles, products, or materials that are determined to be needed to meet national security requirements, any other official receiving a delegation of authority under this Executive order to place orders or to enforce precedence of such orders, shall exercise such authority within 10 calendar days of the receipt of the request; provided, that if the head of any department or agency having delegated responsibilities hereunder disagrees with a request of the Secretary of Defense, such department or agency head shall, within 10 calendar days from the receipt of the request, refer the issue to the Assistant to the President for National Security Affairs, who shall ensure expeditious resolution of the issue.

(d) Proposed department and agency regulations and procedures to implement the delegated authority under this order, and any new determinations made under sections 102(b)(1) or (2), shall

be coordinated by the Director of the Federal Emergency Management Agency with all appropriate departments and agencies.

SEC. 105. *Judicial Review.* This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

EX. ORD. NO. 12734. NATIONAL EMERGENCY CONSTRUCTION AUTHORITY

(NOVEMBER 14, 1990)

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and 3 U.S.C. 301, I declared a national emergency by Executive Order No. 12722, dated August 2, 1990, to deal with the threat to the national security and foreign policy of the United States caused by the invasion of Kuwait by Iraq. 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.

This order is effective immediately and shall be transmitted to the Congress and published in the Federal Register.

EX. ORD. NO. 12733. AUTHORIZING THE EXTENSION OF THE PERIOD OF ACTIVE DUTY OF PERSONNEL OF THE SELECTED RESERVE OF THE ARMED FORCES

(NOVEMBER 13, 1990)

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 121 and 673b(i) of title 10 of the United States Code, I hereby determine that, in the interests of national security, extending the period of active duty is necessary for the following: units of the Selected Reserve, and members of the Selected Reserve not assigned to a unit organized to serve as a unit of the Selected Reserve, now serving on or hereafter ordered to active duty pursuant to section 673b(a) of title 10 of the United States Code and Executive Order No. 12727 of August 22, 1990. Further, under the stated authority, I hereby authorize the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when the latter is not operating as a service in the Department of the Navy, to extend the period of active duty of such units and members of the Selected Reserve.

This order is intended only to improve the internal management of the executive branch, and is not intended to create any

right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

This order shall be published in the Federal Register and transmitted promptly to the Congress.

EX. ORD. NO. 12728. DELEGATING THE PRESIDENT'S AUTHORITY TO SUSPEND ANY PROVISION OF LAW RELATING TO THE PROMOTION, RETIREMENT, OR SEPARATION OF MEMBERS OF THE ARMED FORCES (55 F.R. 35029)

(AUGUST 22, 1990)

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 673c of title 10 of the United States Code and section 301 of title 3 of the United States Code, I hereby order:

SECTION 1. The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, are hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority vested in the President by section 673c of title 10 of the United States Code (1) to suspend any provision of law relating to promotion, retirement, or separation applicable to any member of the armed forces determined to be essential to the national security of the United States, and (2) to determine, for the purposes of said section, that members of the armed forces are essential to the national security of the United States.

SEC. 2. The authority delegated to the Secretary of Defense and the Secretary of Transportation by this order may be redelegated and further subdelegated to subordinates who are appointed to their offices by the President, by and with the advice and consent of the Senate.

SEC. 3. This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

EX. ORD. NO. 12727. ORDERING THE SELECTED RESERVE OF THE ARMED FORCES TO ACTIVE DUTY (55 F.R. 35027)

(AUGUST 22, 1990)

By the authority vested in me as President by the Constitution and laws of the United States of America, including sections 121 and 673b of title 10 of the United States Code, I hereby determine that it is necessary to augment the active armed forces of the United States for the effective conduct of operational missions in and around the Arabian Peninsula. Further, under the stated authority, I hereby authorize the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when the latter is not operating as a service in the Department of the Navy,

to order to active duty units and individual members not assigned to units, of the Selected Reserve. This order is intended only to improve the internal management of the executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

This order shall be published in the Federal Register and transmitted promptly to the Congress.

EX. ORD. NO. 12724. BLOCKING IRAQI GOVERNMENT PROPERTY AND PROHIBITING TRANSACTIONS WITH IRAQ[1]

(AUGUST 9, 1990)

By the authority vested in me as President by the Constitution and laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 301 of title 3 of the United States Code, and the United Nations Participation Act (22 U.S.C. 287c), in view of United Nations Security Council Resolution No. 661 of August 6, 1990, and in order to take additional steps with respect to Iraq's invasion of Kuwait and the national emergency declared in Executive Order No. 12772.

I, George Bush, President of the United States of America, hereby order:

SECTION 1. Except to the extent provided in regulations that may hereafter be issued pursuant to this order, all property and interests in property of the Government of Iraq that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are hereby blocked.

SEC. 2. The following are prohibited, except to the extent provided in regulations that may hereafter be issued pursuant to this order:

(a) The importation into the United States of any goods or services of Iraqi origin, or any activity that promotes or is intended to promote such importation;

(b) The exportation to Iraq, or to any entity operated from Iraq, or owned or controlled by the Government of Iraq, directly or indirectly, of any goods, technology (including technical data or other information), or services either (i) from the United States, or (ii) requiring the issuance of a license by a federal agency, or any activity that promotes or is intended to promote such exportation, ex-

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[1] Presidential Administrative Order issued on July 28, 1998 (63 F.R. 41175) provided:

On August 2, 1990, by Executive Order 12722, President Bush declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Iraq. By Executive Orders 12722 of August 2, 1990, and 12724 of August 9, 1990, the President imposed trade sanctions on Iraq and blocked Iraqi government assets. Because the Government of Iraq has continued its activities hostile to United States interests in the Middle East, the national emergency declared on August 2, 1990, and the measures adopted on August 2 and August 9, 1990, to deal with that emergency must continue in effect beyond August 2, 1998. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iraq.

cept donations of articles intended to relieve human suffering, such as food and supplies intended strictly for medical purposes;

(c) Any dealing by a United States person related to property of Iraqi origin exported from Iraq after August 6, 1990, or property intended for exportation from Iraq to any country, or exportation to Iraq from any country, or any activity of any kind that promotes or is intended to promote such dealing;

(d) Any transaction by a United States person relating to travel by any United States citizen or permanent resident alien to Iraq, or to activities by any such person within Iraq, after the date of this order, other than transactions necessary to effect (i) such person's departure from Iraq. (ii) travel and activities for the conduct of the official business of the Federal Government or the United Nations, or (iii) travel for journalistic activity by persons regularly employed in such capacity by a newsgathering organization;

(e) Any transaction by a United States person relating to transportation to or from Iraq; the provision of transportation to or from the United States by any Iraqi person or any vessel or aircraft of Iraqi registration; or the sale in the United States by any person holding authority under the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 *et seq*.), of any transportation by air that includes any stop in Iraq;

(f) The performance by any United States person of any contract, including a financing contract, in support of an industrial, commercial, public utility, or governmental project in Iraq;

(g) Except as otherwise authorized herein, any commitment or transfer, direct or indirect, of funds, or other financial or economic resources by any United States person to the Government of Iraq or any other person in Iraq;

(h) Any transaction by any United States person that evades or avoids, or has the purpose of evading or avoiding, any of the prohibitions set forth in this order.

SEC. 3. For purposes of this order:

(a) the term "United States person" means any United States citizen, permanent resident alien, juridical person organized under the laws of the United States (including foreign branches), or any person in the United States, and vessels of U.S. registration.

(b) the term "Government of Iraq" includes the Government of Iraq, its agencies, instrumentalities and controlled entities, and the Central Bank of Iraq.

SEC. 4. This order is effective immediately.

SEC. 5. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of this order. Such actions may include prohibiting or regulating payments or transfers of any property or any transactions involving the transfer of anything of economic value by any United States person to the Government of Iraq, or to any Iraqi national or entity, owned or controlled, directly or indirectly, by the Government of Iraq or Iraqi nationals. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the Federal Government. All agencies of the Federal Government are directed to take all appropriate

measures within their authority to carry out the provisions of this order, including the suspension or termination of licenses or other authorizations in effect as of the date of this order.

SEC. 6. Executive Order No. 12722 of August 2, 1990, is hereby revoked to the extent inconsistent with this order. All delegations, rules, regulations, orders, licenses, and other forms of administrative action made, issued, or otherwise taken under Executive Order No. 12722 and not revoked administratively shall remain in full force and effect under this order until amended, modified, or terminated by proper authority. The revocation of any provision of Executive Order No. 12722 pursuant to this section shall not affect any violation of any rules, regulations, orders, licenses, or other forms of administrative action under that order during the period that such provision of that order was in effect.

This order shall be transmitted to the Congress and published in the Federal Register.

EX. ORD. NO. 12722. BLOCKING IRAQI GOVERNMENT PROPERTY AND PROHIBITING TRANSACTIONS WITH IRAQ[2]

(AUGUST 2, 1990)

By the authority vested in me as President by the Constitution and laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3 of the United States Code.

I, George Bush, President of the United States of America, find that the policies and actions of the Government of Iraq constitute an unusual and extraordinary threat to the national security and foreign policy of the United States and hereby declare a national emergency to deal with that threat.

I hereby order:

SECTION. 1. All property and interests in property of the Government of Iraq, its agencies, instrumentalities and controlled entities and the Central Bank of Iraq that are in the United States, that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are hereby blocked.

SEC. 2. The following are prohibited, except to the extent provided in regulations which may hereafter be issued pursuant to this order.

(a) The import into the United States of any goods or services of Iraqi origin, other than publications and other informational materials;

(b) The export to Iraq of any goods, technology (including technical data or other information controlled for export pursuant to Section 5 of the Export Administration Act (50 U.S.C. App. 2404)) or services from the United States, except publications and other informational materials, and donations of articles intended to relieve human suffering, such as food, clothing, medicine and medical supplies intended strictly for medical purposes;

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[2] See footnote 1 above.

(c) Any transaction by a United States person relating to transportation to or from Iraq; the provision of transportation to or from the United States by any Iraqi person or any vessel or aircraft of Iraqi registration; or the sale in the United States by any person holding authority under the Federal Aviation Act of 1958, as amended (49 U.S.C. 1514), of any transportation by air which includes any stop in Iraq;

(d) The purchase by any United States person of goods for export from Iraq to any country;

(e) The performance by any United States person of any contract in support of an industrial or other commercial or governmental project in Iraq;

(f) The grant or extension of credits or loans by any United States person to the Government of Iraq, its instrumentalities and controlled entities;

(g) Any transaction by a United States person relating to travel by any United States citizen or permanent resident alien to Iraq, or to activities by any such person within Iraq, after the date of this order, other than transactions necessary to effect such person's departure from Iraq, or travel for journalistic activity by persons regularly employed in such capacity by a newsgathering organization; and

(h) Any transaction by any United States person which evades or avoids, or has the purpose of evading or avoiding, any of the prohibitions set forth in this order.

For purposes of this order, the term "United States person" means any United States citizen, permanent resident alien, juridical person organized under the laws of the United States, or any person in the United States.

SEC. 3. This order is effective immediately.

SEC. 4. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of this order. Such actions may include prohibiting or regulating payments or transfers of any property or any transactions involving the transfer of anything of economic value by any United States person to the Government of Iraq, its instrumentalities and controlled entities, or to any Iraqi national or entity owned or controlled, directly or indirectly, by Iraq or Iraqi nationals. The Secretary may redelegate any of these functions to other officers and agencies of the Federal Government. All agencies of the United States Government are directed to take all appropriate measures within their authority to carry out the provisions of this order, including the suspension or termination of licenses or other authorizations in effect as of the date of this order.

This order shall be transmitted to the Congress and published in the Federal Register.

B. The Balkans Region

EX. ORD. NO. 13120. ORDERING SELECTED RESERVE AND CERTAIN INDIVIDUAL READY RESERVE MEMBERS OF ARMED FORCES TO ACTIVE DUTY

(APRIL 27, 1999)

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 121 and 12304 of title 10, United States Code, I hereby determine that it is necessary to augment the active armed forces of the United States for the effective conduct of operations in and around the former Yugoslavia related to the conflict in Kosovo. Further, under the stated authority, I hereby authorize the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, under their respective jurisdictions, to order to active duty any units, and any individual members not assigned to a unit organized to serve as a unit, of the Selected Reserve, or any member in the Individual Ready Reserve mobilization category and designated as essential under regulations prescribed by the Secretary concerned, and to terminate the service of those units and members ordered to active duty.

This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

EX. ORD. NO. 12982. ORDERING SELECTED RESERVE OF ARMED FORCES TO ACTIVE DUTY

(DECEMBER 8, 1995)

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 121 and 12304 of title 10, United States Code, I hereby determine that it is necessary to augment the active armed forces of the United States for the effective conduct of operations in and around former Yugoslavia. Further, under the stated authority, I hereby authorize the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, to order to active duty any units, and any individual members not assigned to a unit organized to serve as a unit, of the Selected Reserve.

This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

This order shall be published in the Federal Register and transmitted to the Congress.